

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TAMMY KITZMILLER; et al.,

Plaintiffs

vs.

DOVER AREA SCHOOL DISTRICT,
et al.,

Defendants

CIVIL ACTION NO. 04-CV-2688

(JUDGE JONES)

Deposition of

: JENNIFER MILLER

Taken by

: Defendants

Date

: May 18, 2005, 10:00 a.m.

Before

: Vicki L. Fox, RMR,
Reporter-Notary

Place

: Two School Lane
Dover, Pennsylvania

APPEARANCES:

PEPPER HAMILTON LLP

BY: CHRISTOPHER J. LOWE, ESQUIRE

For - Plaintiffs

THOMAS MORE LAW CENTER

BY: PATRICK T. GILLEN, ESQUIRE

For - Defendants

KILLIAN & GEPHART LLP

BY: JANE GOWEN PENNY, ESQUIRE

For - Jennifer Miller

ALSO PRESENT: Michael Baksa

I N D E X

WITNESS

JENNIFER MILLERExamination

By Mr. Gillen

3

EXHIBITS

J. Miller Deposition

Exhibit NumberPage

- | | | |
|----|---|-----|
| 1. | April 1, 2003 memo from Trudy K. Peterman to Mr. Michael Baksa, Mr. Larry R. Redding and Mrs. Bertha Spahr, re: Creationism As It Relates to the Approved School Board Biology I Curriculum, and attachments. | 20 |
| 2. | February 11, 2003 memo from Dr. Trudy K. Peterman To Dr. Richard Nilsen, Mr. Mike Baksa and Mrs. Denise Russell, re: Budge Justifications for Science Department for 2003-2004 Budget Year, and attachments. | 48 |
| 3. | Packet of Dover Area School District School Board Meeting Minutes and notes of Jennifer Miller. | 61 |
| 4. | Eight pages of handwritten notes made by Jennifer Miller. | 64 |
| 5. | Packet of documents produced by Jennifer Miller. | 64 |
| 6. | Packet of documents produced by Jennifer Miller. | 64 |
| 7. | October 13, 2004 memos, Michael Baksa to Board Of Directors with attachments. | 110 |

STIPULATION

It is hereby stipulated by and between the respective parties that sealing, certification and filing are waived; and that all objections except as to the form of the question are reserved until the time of trial.

JENNIFER LYNNE MILLER, called as a witness, being duly sworn, was examined and testified, as follows:

BY MR. GILLEN:

Q. Good morning, Mrs. Miller. My name is Pat Gillen, and I am one of the attorneys for the defendants in this case.

A. Okay.

Q. As you know, this is the time and place set for your deposition which I see as just my opportunity to get your side of the story.

A. Okay.

Q. Plainly, there is a dispute here. Different people have different perspectives on what happened and what the issues are. This is my chance to get that from you.

A. Okay.

Q. There are a few aspects of this process that are rather unusual. The first is that Vicki records everything we say. And therefore, that places a premium on our responses being verbal as opposed to gestures or head nods which you will find we do quite frequently.

1 A. No.

2 Q. Give me a sense of your employment history. When did
3 you start teaching?

4 A. I started teaching the '93-'94 school year.

5 Q. Where did you start?

6 A. Here at Dover.

7 Q. What subject matter?

8 A. My first year, I taught Biology and it was called Techno
9 Science at that time, which is basically an
10 environmental science. Since then, I basically taught
11 Biology and Biology 2 which later became Anatomy and
12 Physiology.

13 Q. And subsequently?

14 A. Subsequently what?

15 Q. What did you teach?

16 A. Since?

17 Q. Since the first year.

18 A. Since the first year, it has been Biology, Anatomy and
19 Physiology.

20 Q. We know that the biology text and changes to the biology
21 curriculum are sort of the focal point of this dispute.
22 I want to get a sense for what you recall about how this
23 dispute unfolded.

24 A. Okay.

25 Q. If we look at the period up until January of 2002, and

1 everything before that, were these issues on the radar
2 screen so to speak prior to January of 2002?

3 A. No, not that I'm aware of.

4 Q. How about for the year 2002, do you recall the biology
5 text or the biology curriculum being a focal point of
6 attention by the Board?

7 A. No.

8 Q. That brings us to 2003. How about that year if we look
9 at that year from January through say May of 2003?

10 A. Yes. The only thing that I can remember is a mention
11 from Bertha Spahr, who is the Department head, of
12 conversations that I guess that were held between Mr.
13 Baksa and her, or Dr. Peterman and her, on teaching
14 equal time Creationism and Evolution in the biology
15 classroom.

16 Q. Okay. Give me a sense for when that conversation
17 occurred.

18 A. I couldn't pinpoint it. Probably spring of 2003.

19 Q. April, May?

20 A. Right, somewhere around there.

21 Q. And tell me what did Bert Spahr tell you?

22 A. I believe it was just something like we better, you
23 know, keep our guard up. This is what was asked of me
24 or discussed. Something like that.

25 And basically after that, I mean other than that

1 conversation, I don't remember much else being
2 discussed.

3 Q. Did she attribute any statements to Mike Baksa?

4 A. Not in particular, no. She just had -- I believe she
5 said he had come to her and talked to her about it, his
6 concerns or whatever.

7 Q. Let me be more specific. You used the word Creationism.
8 Did Bert say that Mike had told her someone wanted to
9 teach Creationism?

10 A. I remember it that way, yes.

11 Q. Do you recall her saying anything about equal time for
12 other theories?

13 A. I believe that she said equal time Creationism and
14 Evolution.

15 Q. Apart from that statement, was there anything else that
16 Bert told you and attributed to Mike Baksa?

17 A. Not that I can recall, no.

18 Q. Did she mention Dr. Nilsen in that conversation?

19 A. I don't believe so, no.

20 Q. How about Dr. Peterman?

21 A. I just know that after Mr. Baksa came to her, then she
22 went to Dr. Peterman with her concerns. I know she was
23 concerned with at that time, we had two untenured
24 teachers teaching biology and subjecting them to
25 criticism or whatever. The subject sort of was a leery

1 one. She went to Dr. Peterman with her concerns.

2 I don't know any specific statements that Dr.
3 Peterman made because I was not in that meeting when she
4 went to her.

5 Q. Fair enough. Did she state what her concerns were for
6 the untenured teachers?

7 A. Just that there has been court cases that say you can't
8 teach Creationism. So she was concerned if this is
9 coming, then you have some untenured teachers that would
10 be teaching it. She was concerned for -- I don't
11 know -- I don't know if I want to say for their jobs.
12 Younger teachers and putting them in that position I
13 guess.

14 Q. You said that Bert said we need to keep on our guard?

15 A. Yes. Something to that effect, yeah.

16 Q. Sure. Did she say anything else that elaborated on that
17 point?

18 A. Not that I can recall.

19 Q. Did Bert ever show you a memo reflecting --

20 A. No.

21 Q. -- her conversation?

22 A. No. I have seen it recently. But not at that time, I
23 didn't, no.

24 MS. PENNY: Off the record.

25 (J. Miller Deposition Exhibit 1 was marked.)

1 BY MR. GILLEN:

2 Q. Would you take a minute to look that over, Jen?

3 A. Sure. Okay.

4 Q. There's a few things in there I would like to ask you
5 about. If you look at that first paragraph about midway
6 through, you will see a sentence which says that she --
7 referencing Ms. Spahr -- explained to Mr. Baksa that all
8 biology teachers state that another theory of Evolution
9 is Creationism, but Creationism per se is not taught
10 since it is not addressed by the standards.

11 Did you have any discussion with Bert Spahr about
12 whether Creationism was referenced prior to April 1st,
13 2003?

14 A. Not that I can recall. I don't know if I would agree
15 with what she says there, but I don't necessarily recall
16 her -- we may have had a conversation, but I don't
17 remember any specifics if we had.

18 Q. That's fine. Everyone realizes you are trying to
19 remember things from April of 2003.

20 A. Right.

21 Q. What do you mean when you say I don't agree with what
22 she says there?

23 A. I will just tell you the way I teach Evolution is I have
24 never really had a problem with students in my classroom
25 disagreeing or having a whole lot of controversy because

1 the very first day that I teach Evolution, I ask them
2 what their definition of Evolution is.

3 We always get all kinds of different things,
4 monkeys, we came from monkeys and all kinds of things
5 like that. Then I try to put to rest the first day that
6 what we are going to teach is Evolution is change over
7 time.

8 And I basically tell them I don't believe -- I
9 can't care how they believe life began. We are not
10 going to hit that. We are going to look at once life is
11 here, what has happened to it since.

12 I wouldn't say that I necessarily stated that
13 another theory is Creationism because I try to put that
14 at rest in the beginning and not get into the origin of
15 life type thing.

16 Q. Okay. And that is part of the reason I asked you the
17 question. You say change over time an origin of life.
18 Where do you start in your presentation of Evolutionary
19 Theory, Jen; how do you present that concept to your
20 students?

21 A. That conversation I just told you is basically the first
22 day. And then we look at -- we start with Darwin and
23 his background, how he went on his trip and what
24 evidence he collected and that kind of thing and how he
25 came up with his theory of natural selection.

1 I always tell them that Darwin didn't really come
2 up with Evolution, that most people knew that things
3 changed. That Darwin was the one that came up with
4 natural selection, a mechanism for how things changed.

5 Then we look from there at basically natural
6 selection and competition and how finches -- how do you
7 think a finch got here? There's all kinds of different
8 species of finches. How do we get all these different
9 species of finches? We look at that.

10 Q. Am I understanding you correctly that you don't look at
11 sort of the microbiological part of the process?

12 A. Right. Right.

13 Q. Don't look at the larger sort of what cosmological part
14 of the process, the Big Bang?

15 A. Right, right.

16 Q. And then you have referenced a sort of diversification
17 of species?

18 A. Yes.

19 Q. Do you focus on change within species?

20 A. Yes. But like by isolation, for example, a finch could
21 become two species of finches because they don't
22 interbreed anymore. They would still be two separate
23 species of finches, but they are still a finch.

24 Q. You are the biology teacher. How is that level of
25 change you have just described by your profession?

1 A. To me, I call it speciation. That is what that is
2 called. Origin of species or speciation, becoming new
3 species.

4 Q. You have referenced origin of life. Do you see that as
5 another way of saying origin of species, or it's two
6 different concepts?

7 A. I see that as two different things.

8 Q. Tell me how.

9 A. Origin of life is how life began from a single molecule
10 up to the many organisms that we have today. Whereas
11 speciation is just as I said, how a finch becomes
12 different species of finches or how a turtle becomes
13 different species of turtles.

14 Q. Forgive me. High school biology was my last biology.
15 This sort of comes up in these depositions. You are the
16 teacher so I want to get a sense for what about the
17 connection between species or the diversification of
18 species?

19 A. That is one part of Darwin's Theory, the interconnection
20 between different species. But again, I try to
21 concentrate on not going back into what became what
22 necessarily, sort of like a timeline of life
23 necessarily. I try to stay away from that.

24 I go with, like I said, speciation.

25 Q. How about if we look at the origin of man? I am not

1 sure how that is described in Evolutionary Theory. But
2 that topic, do you present on that?

3 A. No.

4 Q. Did you ever present on that?

5 A. Not that I can recall, no.

6 Q. Did you see that subject as outside -- what shall I say
7 -- the parameters of presentation that you have
8 described to me thus far?

9 A. It definitely -- I wouldn't even say it's part of
10 Darwin's Theory, the origin of man. But it is part of
11 sort of the whole -- can fall under the Evolution. But
12 again, I try to stick with some of Darwin's Theory and
13 speciation. I see it as two separate things.

14 Q. I take it from your answers that it was never the
15 subject of your classroom instruction?

16 A. Right. I couldn't tell you what other classrooms do.

17 Q. If we look at the second paragraph of this document
18 which has been marked as Exhibit 1, and which I will
19 just say for the record is a memo from Dr. Peterman
20 dated April 1st, 2003 to Mike Baksa and others, the
21 second paragraph of that memo, the second sentence says
22 I advise them to continue to mention that Creationism is
23 another alternate theory of Evolution.

24 A. Yes.

25 Q. Did you ever receive instruction from anyone along those

1 lines?

2 A. I don't recall ever Dr. Peterman, no, saying anything
3 like that to us.

4 Q. How about Bert Spahr, did she ever give you a direction
5 along those lines?

6 A. I think she may have said continue teaching as is, you
7 know, as you are.

8 Q. And that statement, do you connect that with this memo
9 or the discussion you had with Bert?

10 A. Probably, yeah. When she was sort of explaining that
11 this occurred, and she explained just to continue
12 teaching as we are to our standards and things like
13 that.

14 Q. When you spoke with Bert, did she reference this memo?

15 A. I don't -- I couldn't tell you. I don't know if she did
16 or not.

17 Q. That's fine. I just want to get a sense for what you
18 recall. That's all.

19 So we have this discussion in the spring of 2003,
20 April or May. When does the school year end?

21 A. Beginning of June; first, second week of June.

22 Q. I think you said you don't recall anything really
23 happening after that?

24 A. No.

25 Q. Let's look at the fall of 2003. Let me ask you: Did

1 the biology text or biology curriculum come to your
2 attention in the fall?

3 A. Yes.

4 Q. Tell me how.

5 A. We were asked to sit in in a meeting with Mr. Bonsell to
6 go over his concerns I guess with how Evolution was
7 taught in the biology classes.

8 Q. You say fall of 2003. Can you date it any more
9 precisely?

10 A. No. I don't remember.

11 Q. That's fine.

12 A. I am guessing -- no, I don't know. I don't know when it
13 was.

14 Q. That's quite all right and not unusual.

15 A. I know it was the fall because I remember having
16 discussions that his son was going to take biology in
17 the spring. So I know it was before. Our spring
18 semester would have started in January.

19 Q. All right. I jumped to this a little early. Let me ask
20 you this: In 2003 in the spring, was the biology text
21 up for purchase?

22 A. I have to think. We got the textbook this year,
23 2004-2005. I guess it would have been, yes.

24 Q. Let's shift back to the spring, say the first half of
25 the year of 2003. Let me ask you: Do you recall the

1 biology text being a subject of discussion?

2 A. No. The only -- I believe if I remember correctly that
3 year, we were up for new textbooks because there's a
4 rotation. Each Department gets them a certain number of
5 years. And the Science Department was up to get new
6 textbooks.

7 I believe that was the year that they put off all
8 purchase of any textbooks, the School Board did, until
9 the next year. They wanted to wait a year I guess. I
10 am assuming it was to save money.

11 Q. You say you're assuming. Did you hear anything about
12 fiscal pressure?

13 A. I think so. I don't know. I was told probably -- I
14 remember something about using the fund balance the next
15 year to purchase the textbooks or something. No
16 textbooks were purchased that year as far as I know.

17 Q. Give me a sense for when you got that news. Did that
18 utterly cut short even the selection process, or had the
19 selection occurred, and then you got the word we are not
20 going to buy them?

21 A. I believe that the selection had occurred because we
22 have to have our budgets done in January. So I believe
23 we had already put in for textbooks, and then we had
24 heard that no one was getting them that year.

25 Q. If you look at the ordinary cycle of text selection and

1 budget process for the School District, does that give
2 you a sense for when you would have -- the text
3 selection would have occurred and the news of no
4 purchase would have been given? That is a very awkward
5 question.

6 A. No, we always put them in in January. The budget I
7 believe goes out in the summer. Sometime between
8 January and June, we had heard that they weren't doing
9 any textbooks at some point.

10 Q. Good enough. So we are in the fall of 2003 then?

11 A. Yes.

12 Q. And there is a meeting with Alan Bonsell?

13 A. Yes.

14 Q. Do you know why you were meeting with Alan Bonsell? Was
15 it his capacity as head of the curriculum committee?

16 A. Yes. I believe so at that point, yes.

17 Q. And how did you get word of the meeting?

18 A. I'm assuming -- I don't remember specifically, but I'm
19 assuming Mrs. Spahr would have told us as a Science
20 Department that we were asked to meet.

21 Q. If we use this meeting as a marker and then the
22 discussion you have already recalled, anything else come
23 to mind between that discussion with Bert in the spring
24 and this notification from Bert that there is going to
25 be a meeting of the curriculum committee?

1 A. No, not that I recall.

2 Q. When Bert Spahr told you there was going to be a meeting
3 with Alan Bonsell, did she give you more information
4 about that?

5 A. I believe that it was just on be prepared to explain how
6 you teach Evolution, that he had concerns of how
7 Evolution was taught.

8 Q. At that time, did she tell you the nature of his
9 concerns?

10 A. Other than that his son was going to be taking biology
11 in the spring, I don't recall anything.

12 Q. Where was the meeting?

13 A. I believe that was in one of the conference rooms at the
14 High School. It might have been in the Principal's
15 Office. I don't remember specifically.

16 Q. Who was there?

17 A. I can't remember if all of the Science Department was
18 there, but I remember a good number of us were there.
19 There's seven of us. I would say at least over half of
20 us was there.

21 Obviously, Mr. Bonsell was there. I can't
22 remember if -- I am assuming it was Mr. Baksa. He was
23 usually in on all of the meetings. I can't remember
24 if -- I think -- I am trying to think in the fall of
25 2003, I think maybe Dr. Peterman was there also.

1 Q. Do you recall what background you received?

2 A. Just that Mr. Bonsell -- I remember the conversation of
3 him being I guess what is called a Young Earth Theorist
4 that only believe life is a little over 2,000 years old,
5 does not believe necessarily in some of the carbon
6 dating and fossil records that prove that life is older
7 than 2,000 years old.

8 Q. Do you recall any mention of Intelligent Design?

9 A. No.

10 Q. Any mention of *Of Pandas and People*?

11 A. No.

12 Q. Any mention of balance in the text that was being used
13 at that time?

14 A. Not that I can recall, no.

15 Q. Any mention of specific concerns about the text that was
16 in use?

17 A. No. Not that I can recall, no.

18 Q. Apart from this background you believe you received in
19 preparation for this meeting, any other discussions with
20 your colleagues leading up to the meeting?

21 A. Not that I can remember, no.

22 Q. Tell me how the meeting unfolded to the extent you can
23 remember.

24 A. Again, he was asking how we taught Evolution, how was it
25 presented in the biology classroom. And I explained to

1 him, just as I explained to you earlier, how I approach
2 Evolution.

3 And we did explain to him -- he was concerned with
4 -- I remember talking about the origin of life. He was
5 concerned with do we look at the origin of life. And we
6 explained to him no, that we did explain the difference
7 between origin of life and origin of species and
8 speciation, and that is what we covered.

9 And to the best of my recollection when we left
10 the meeting, we thought that he was -- we left on good
11 terms. There was no, you know, heated debate or
12 anything like that.

13 We had assumed that his concerns were addressed
14 and that he was satisfied with how we taught Evolution
15 when we left that meeting.

16 Q. Let me ask about that. Was it just an exchange, a sort
17 of cordial exchange, or was there any -- what shall I
18 say -- animosity?

19 A. No, I don't remember any.

20 Q. Do you recall anything that Mr. Bonsell said?

21 A. No, I couldn't quote him saying anything in particular.

22 Q. You said that he had a concern related to the origins of
23 life?

24 A. Yes.

25 Q. When he used that term, did you get a sense for what he

1 meant?

2 A. Again, when you're talking about origins of life, that's
3 when you get into some of the aspects of Evolution that
4 are the most controversial because it would talk about
5 how one species would become another species or that
6 kind of thing.

7 Q. But did he say anything that addressed those subjects
8 you have just described?

9 A. I can't remember specifically, no.

10 Q. You explained how you teach biology. Who were the other
11 biology teachers at that time?

12 A. It would have been Leslie Prall and Robert Linker. And
13 Rob Eshbach was teaching it -- I don't remember what
14 year -- but he was teaching at least a couple of classes
15 at some point. So he would have taught it or was
16 currently teaching it. I can't remember.

17 Q. Did they all give an individual explanation?

18 A. Not that I can remember, no. I think that they sort --
19 I don't know if they elected me as the spokesperson or
20 what.

21 Q. Was it basically you gave your explanation, and they
22 said me, too?

23 A. Basically, yes.

24 Q. How about did Creationism come up during that meeting?

25 A. I don't remember that it did, no.

1 Q. Did Bert say anything?

2 A. Not at that meeting, I don't remember, no.

3 Q. I am sorry?

4 A. Not that I remember.

5 Q. Do you recall Bert Spahr bringing any materials to the
6 meeting?

7 A. There were -- I can't remember if it was this meeting,
8 but I know she had stacks of information that she had
9 printed I guess off the Internet on some of the court
10 cases that covered Creationism in the classroom, but I
11 can't remember if it was at that meeting -- we have had
12 so many -- or if it was at other meetings.

13 I don't remember specifically that she had
14 information at that meeting.

15 Q. Do you recall anything that Dr. Peterman said when she
16 was there?

17 A. No, nothing in particular.

18 Q. Sometimes recollecting an event helps you get a better
19 fix on it. As you sit here and describe the meeting in
20 more detail, do you think she might have been there?

21 A. That is why I can't necessarily say that she said
22 anything particular because I can't really remember --
23 you know what I mean -- if she was there or not.

24 I guess I assumed she was there, but I'm not sure.
25 I can't be positive.

1 Q. You say you left there thinking that Mr. Bonsell's
2 concerns had been addressed. If we look at the period
3 after this meeting through the end of 2003, did you
4 receive any communication from the administration that
5 you saw as connected to this meeting?

6 A. Other than when we left the meeting, Mr. Baksa may have
7 said I think it went well -- or you know what I mean --
8 I think you addressed his concerns, something like that.

9 Q. But nothing else?

10 A. If you are talking about to the end of 2003, are you
11 talking about the 2003-2004 school year, or are you just
12 talking to the end of 2003? It is different with school
13 years.

14 Q. That has happened more than once. Not being a teacher,
15 I tend to think in calendar years and almost pine for
16 the days I thought in school years.

17 You are right. I am focused on the end of the
18 calendar year 2003.

19 A. I don't remember anything then, no.

20 Q. How about talk among your colleagues, did you have a
21 discussion with your colleagues about what you perceived
22 as the outcome of the meeting?

23 A. I don't remember any specific discussions, but I would
24 imagine as we walked out, we were discussing it. I,
25 again, thought that it went well.

1 I think some of us may have been maybe a little
2 more leery than other as to what does this mean, what is
3 coming next, that kind of thing.

4 Q. And by that, Jen, do you mean that you tended to look at
5 this meeting in the fall in light of what Bert had said
6 in the spring?

7 A. I think so, yeah. Yeah.

8 Q. Well, we're moving into 2004. Let's look at -- let me
9 ask you: For the conclusion of the 2003 year, did you
10 have any interaction with Board members about the
11 subject matter of that meeting with Mr. Bonsell?

12 A. No.

13 Q. Any discussions with them about the biology text?

14 A. No.

15 Q. Or whether it would be purchased?

16 A. No.

17 Q. Did Bert Spahr say anything in the period after this
18 meeting and before the close of calendar year of 2003
19 about the meeting or the issues presented?

20 A. Other than what I just told you, again, maybe a little
21 leery of what was coming down, what was coming next or
22 if this was the end. Again, probably reiterated we
23 thought the meeting went well, that kind of thing.

24 Q. And that is what I am getting at. Do you think that
25 Bert Spahr remained apprehensive after the meeting or

1 did she share the consensus that it seems to have gone
2 well, or somewhere in between? Tell me if you had an
3 impression.

4 A. I would say that Mrs. Spahr's personality is to always
5 be apprehensive. I would say that she probably was
6 apprehensive.

7 Q. What do you mean by that?

8 A. Well, she's --

9 Q. A pessimist?

10 A. Yes, I would say that she tends to be a pessimist, yes.
11 At the same time, I think she was look out as Department
12 head and was trying to look out for the teachers that
13 were under her, again, that were nontenured and things
14 like that.

15 I think she was looking ahead to try to keep the
16 Science Department's best interests in mind.

17 Q. Sure. And the nontenured teachers I could see sort of
18 figure prominently in her consideration. What was the
19 concern, do you know? Was it discharge, or liability,
20 or what was she worried about there?

21 A. I don't know if I would say discharge. Liability I
22 would say is part of it. I don't know if it came up,
23 but -- I can't speak for her. I couldn't necessarily
24 say what she was thinking. But I think it was more of a
25 liability issue with them not having tenure yet.

1 Mrs. Spahr.

2 Q. But at least for these first three months, no back and
3 forth yet about the text?

4 A. No. Not that I can remember, no.

5 MR. GILLEN: Let's take a brief break.

6 (A recess was taken.)

7 AFTER RECESS

8 BY MR. GILLEN:

9 Q. Let me ask you, Jen, we are looking at 2004 from January
10 through March. Did you attend any School Board meetings
11 during that period?

12 A. I don't remember. I don't remember if I did. If I did,
13 I would have them in my documents -- well, if I saved
14 them that is, if I saved the minutes. But I don't
15 remember in particular.

16 Q. How about attendance at Board meetings just generally,
17 do you have a practice of going as a general matter?

18 A. Not in general. There are occasions if a topic is going
19 to come up. I remember a possibility of eliminating a
20 position that a lot of teachers went. When the building
21 project was, I went to those meetings.

22 When this topic came up that related to my
23 textbook or my curriculum, I went.

24 Q. If we look at that as your sort of polestar there, a
25 Board meeting coming up that would relate to your area

1 of teaching and we look at 2003, did you go to any Board
2 meetings in 2003 because you thought the biology text or
3 biology curriculum would come up?

4 A. I don't believe so. There were occasions that I went,
5 but I don't remember if it was because the textbook was
6 going to come up or not.

7 Q. Was 2003 a big year for the building project?

8 A. I don't remember.

9 Q. Every year is a big year.

10 A. I don't think it was necessarily a big year for the
11 building project, no. I couldn't tell you if I went to
12 2003 or not. I don't remember.

13 Q. Then for this period say January through March of 2003,
14 don't have any recollection of being --

15 A. I don't remember if I was there or not.

16 Q. If we look at the period between March and June of 2004,
17 did anything occur during that period that touched on
18 the biology text, biology curriculum?

19 A. As far as meetings and things?

20 Q. Yes.

21 A. Yes.

22 Q. Tell me what you can remember.

23 A. I don't remember how many meetings we had, but there
24 were several meetings with the Board curriculum
25 committee again that touched on how we teach Evolution,

1 the textbooks, concerns with the textbook and things
2 like that.

3 Q. Let's look at you said there's several meetings. How
4 many during that period between March and June do you
5 think?

6 A. I would say at least two or three.

7 Q. These are meetings with the Board curriculum committee?

8 A. Yes.

9 Q. Looking at this period between March and June of 2004,
10 were there Department meetings apart from the Board
11 curriculum committee meetings?

12 A. Yes. We would have Department meetings typically once a
13 month or something, Science Department meetings.

14 Q. And your answer points to imprecision in my question.
15 Were there Department meetings at which the biology text
16 and biology curriculum were discussed?

17 A. I would assume that during one of the Department
18 meetings -- no, it wouldn't have been then. It would
19 have been fall of 2003 is when we would have been
20 looking at biology textbooks and picking and sort of
21 collaborating on which one we liked.

22 Q. Okay.

23 A. But specific Department meetings, I don't remember any
24 that just dealt with that, no.

25 Q. Did it come up -- did the subject of biology text come

1 up during Department meetings in this period between
2 March and June?

3 A. I would imagine that they did. I can't remember
4 specifically.

5 Q. Right.

6 A. But I would imagine that they did.

7 Q. All right. There's several Board curriculum meetings.
8 Tell me what you can remember about those. The first
9 one, any sense for what month that might be in if we
10 look at April, May, and June?

11 A. My recollection is it seemed like a lot of them were
12 towards the end of the school year. So it would have
13 been May or June.

14 I remember specifically one was like on the last
15 day of school. I remember that one because we were
16 called to a meeting on the last day of school. I know
17 that there were meetings prior to that, and I can't
18 remember when specifically they were.

19 Q. You say several, what do you think during that period?

20 A. Including that one at the end, like I said, I think
21 three, four.

22 Q. Tell me do you have distinct recollections like the
23 first meeting and what occasioned that?

24 A. I remember a meeting I believe it was at the high school
25 where again the topic of a textbooks came up and didn't

1 like the way Evolution was presented in the textbook or
2 Darwinism was presented in the textbook.

3 Q. All right. Let's get a fix on who was there. This is
4 2004.

5 A. Right. The curriculum committee would have been Sheila
6 Harkins, Bill Buckingham and Casey Brown.

7 Q. All right.

8 A. The Department -- I mean I know that for the most part,
9 it was Mrs. Spahr and I and Rob Eshbach seemed to be the
10 three that attended a lot of the meetings. I can't
11 remember if other Department members were there. Some
12 were there at some meetings and then others not. But
13 the three of us were at most of the meetings.

14 Q. You say at this meeting concerns were expressed about
15 the text. Who expressed those concerns?

16 A. We had gotten a list from Mr. Baksa of Mr. Buckingham's
17 concerns with the textbook. He had pages with his
18 concerns with paragraphs or things like that that were
19 in the textbook.

20 Q. When did you get that list?

21 A. Again, I would assume it was around this time, spring
22 some time.

23 Q. When Mr. Baksa gave you that list, did Mike say anything
24 else to you?

25 A. I don't remember any specific quotes, but I believe we

1 were to take a look at those pages and see if we could
2 see what his concerns were, take a look at those pages.

3 Q. Did you look at the pages that were identified prior to
4 the meeting?

5 A. I believe so, yeah.

6 Q. What were you trying to do when you looked at them, get
7 a sense for the --

8 A. What his concerns were. Get a sense of what his
9 concerns were with the textbook.

10 Q. I guess I am just trying to figure out how you would be
11 able to do that. You are looking at pages. Was it a
12 handwritten list you received?

13 A. I got both. I think I got both a handwritten and a
14 typed list.

15 Q. Did you keep that?

16 A. I think it is in the packet, yes.

17 Q. That is the problem. Off the record.

18 (An off-the-record discussion was had.)

19 (J. Miller Deposition Exhibit 2 was marked.)

20 BY MR. GILLEN:

21 Q. Jen, I have shown you a document which we have marked as
22 Miller 2. It is a set of pages really that you provided
23 in response to my subpoena which speak in some way to
24 the questions I have been asking you about the period
25 sort of after March through June of 2004.

1 Would you look through that and see if there is
2 anything that helps you -- that you believe will help
3 you recall the events of that period?

4 A. (Witness complies.)

5 Q. Is there anything? What I am interested in is the
6 subject of these meetings during this period with the
7 Board curriculum committee.

8 A. Yes.

9 Q. You have indicated that some concerns were expressed
10 about the text, and you received a listing of pages. Do
11 you find that?

12 A. Yes.

13 Q. What does it look like?

14 A. It says Curriculum Committee. It is written. And then
15 the page behind that is the typed version.

16 Q. Excellent. And we are referring to a handwritten page
17 first that has Curriculum Committee on the top and the
18 date 6-4-04 on the right-hand top?

19 A. Yes.

20 Q. What is this, Jen?

21 A. This was a list of concerns -- written concerns from
22 Mr. Buckingham.

23 Q. You received this from who?

24 A. Mr. Baksa.

25 Q. An then the document behind it is a typed version of it?

1 A. Yes.

2 Q. Which has a first entry that begins with page 440 and a
3 notation in the right-hand top that says given to Jen
4 Miller.

5 Do you know, Jen, as you look at these documents
6 now whether they were given to you at the same time?

7 A. My recollection is I got the typed version first and the
8 written ones later.

9 Q. Let's look at this meeting where you were presented with
10 a list of reservations about the text.

11 Did you have any discussion with anyone in the
12 Science Department before going into this meeting with
13 the Board curriculum committee?

14 A. We may have gone over these together, the pages and sort
15 of looked at the pages in the book to see where his
16 concerns were. I don't remember any particular
17 discussions.

18 Q. That is what I was going to ask you. Did you and your
19 colleagues reach a consensus about these pages and their
20 contents before going to this meeting?

21 A. I believe so, yes.

22 Q. Tell me what that was.

23 A. As far as what we thought his concerns were?

24 Q. His concerns and your response.

25 A. Most of his concerns seemed to deal with man's evolving.

1 I remember we also mentioned that he looked at the
2 teacher's edition, and some of these concerns were the
3 teacher to teacher section, or where it says applying
4 concepts or something like that may have been only in
5 the teacher's edition. It would not have been seen in
6 the student edition that the students would have gotten.

7 Q. Was the general sense that, again, some of the concerns
8 were misplaced?

9 A. I don't know exactly what you mean by misplaced.

10 Q. In light of what you just described, if it is the
11 teacher's manual and not in the student's version, that
12 is kind of not a real issue.

13 A. Right. But the teacher would be the only one privy to
14 that information. The students wouldn't see it. If
15 they were concerned with what the students would see,
16 that wouldn't necessarily be an issue.

17 Q. Tell me what happened when you got into the meeting.
18 How did it begin?

19 A. I am sure there was an introduction of everyone. Oh,
20 my! I don't know specifically. Like I said, some of
21 these run together of different meetings.

22 Q. Do you recall Mr. Buckingham saying anything?

23 A. At some of these meetings, I know there was some heated
24 exchange between Mrs. Spahr and Mr. Buckingham.

25 Q. Well, we have got two different pages and two meetings.

1 This meeting -- the one that is dated indicates 6-4-04.
2 The one that is not dated, can't speak to that.

3 Are you looking at the typewritten page?

4 A. Yes.

5 Q. And you believe you received that first?

6 A. I believe that I saw this before the handwritten
7 version.

8 Q. Do you remember if this first meeting during this period
9 is the one where there was this heated exchange or not?

10 A. I think so, yes.

11 Q. Tell me about that.

12 A. Somehow it got around to the history of the mural that
13 was taken down from a room in the Science Department --
14 or in the science classroom. And I think Mr. Buckingham
15 stated that -- I think Mrs. Spahr asked him if he saw
16 the -- apparently, the mural was burned and asked him if
17 he knew who had burned it.

18 And he stated something like -- something to the
19 effect that he gleefully saw it burn or something like
20 that. So I remember that part of it.

21 Q. How did that come up?

22 A. Again, looking at the issues with the textbook, like I
23 said, a lot of them had to do with man's Evolution.
24 Again, it kept coming up.

25 I know Mrs. Spahr said several times if I hear the

1 word monkeys to man again, I am going to scream or
2 something. We kept hearing monkeys to man, monkeys to
3 man. And we kept explaining that that is not the part
4 of Evolution that we taught.

5 And I know it came up something about the mural.
6 How can you explain the mural being in the classroom
7 which depicted what you typically see of the monkeys
8 going to man? You have seen that picture. A student
9 had done that. How can you say that you don't teach it
10 when that mural is in the back of the room?

11 Somehow it came around to that mural being in the
12 back of the room.

13 Q. Apart from this exchange that you have recounted,
14 anything else that sticks out from that meeting?

15 A. I think it was our first meeting. I remember -- after
16 that heated exchange, I remember at the end of that
17 meeting, Mr. Buckingham and Mrs. Spahr shaking hands or
18 something and saying no hard feelings, that type of
19 thing at the end of the meeting.

20 As I said before, most of these meetings where
21 they might have been heated during the meeting, we
22 always left feeling that we had accomplished something
23 or that we had explained our position, that kind of
24 thing.

25 Q. Let me ask you about that. Did Sheila Harkins say

1 anything?

2 A. Again, I don't know which meeting it was. I remember
3 Sheila being there, and we were looking at textbooks. I
4 think at that time, we were looking at other family and
5 consumer science textbooks. We may have had some family
6 and consumer science people here also.

7 I remember her pointing out the family and
8 consumer science textbooks, that they weren't -- they
9 weren't different enough from the last edition to
10 warrant ordering a new one.

11 Then I remember her saying something about the
12 biology textbooks, that she fell asleep reading it so
13 she doesn't really know much about the biology because
14 she fell asleep reading that. I remember that.

15 Her concern -- I would say where she was coming
16 from most often in the meetings was cost of textbooks or
17 did it warrant getting new ones, were they different
18 enough from the old ones to order new textbooks.

19 I would say hers was more of a fiscal -- looking
20 at the fiscal end of it than others.

21 Q. How about Casey Brown; when Mr. Buckingham's
22 reservations were discussed, did she say anything?

23 A. I am sure she did. I don't know. I seem to remember
24 her saying -- sort of echoing what we saw in the Dr.
25 Peterman memo, you know, whose religion are we going to

1 teach? The topic of religion came up somehow. Like I
2 say, I can't remember all the details. I don't remember
3 anything specific that she said necessarily.

4 Q. Well, it sounds like you explained to Mr. Buckingham
5 what you had explained to Mr. Bonsell, which is we don't
6 get into that?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes. I would say we did that several times.

10 Q. You say that you left the meeting feeling that -- having
11 a similar sense that concerns had been addressed?

12 A. Yes.

13 Q. Was there any other discussion at the meeting that you
14 can recall now? Did any of your peers speak up?

15 A. I imagine that they did. I know Mrs. Spahr spoke. I
16 also remember discussions during this time, again
17 concerns that we don't -- constantly the monkeys to man
18 and Evolution is not a fact came up.

19 Over these meetings I believe is where we came up
20 with the compromise that we would be willing to point
21 out that Darwin's Theory is not necessarily a fact; that
22 there are parts of Darwin's Theory that don't have as
23 much evidence as others.

24 Again, we left that thinking that that was a
25 compromise on our part. We would be willing to do that.

1 Even though we already did it, let's put it in the
2 curriculum that states that. We explained we already do
3 that.

4 So through these meetings, somewhere came the
5 change in the curriculum that said that gaps --

6 Q. Students will be made aware of gaps and problems?

7 A. Right, in Darwin's Theory. Somewhere in that time frame
8 is where that came out.

9 Q. Let me ask you: Do you remember having received any
10 materials in connection with these meetings during the
11 spring period, DVD's, videotapes?

12 A. Yes, yes. We got an -- I don't remember who it was
13 from, but Mr. Baksa brought over to the Science
14 Department. One of the last days of school, we sat down
15 and watched a videotape. I believe it was called *Icons*
16 *of Evolution* that we had watched that was given to us by
17 -- I am remembering Buckingham that got the tape and
18 gave it to us.

19 Q. Anything else? Did you see *Of Pandas* as of that time?

20 A. I don't believe so.

21 Q. You mentioned that Bert Spahr said monkeys to man, I
22 don't want to hear that again. Did Mr. Buckingham
23 express any other concerns about the presentation of the
24 text not being balanced?

25 A. The main focus was the Evolution of man, and again, the

1 origins of life issues that we talked about before.

2 Q. You said there was some discussion of the theory being
3 presented as a fact. Did Mrs. Brown say anything on
4 that point?

5 A. I can't remember anything specific that she would have
6 said, no. No quotes or anything like that.

7 Q. Did you come away from these meetings in the spring with
8 a sense of where Casey Brown stood with respect to
9 presenting other theories?

10 A. Well, not necessarily other theories. I know at one
11 point, Mr. Baksa -- I can't remember when this was, the
12 summer or spring, when it was. Someone -- I think it
13 was Mr. Baksa mentioned to me that she was having him
14 read books on existentialism or something like that.

15 If we -- I don't know. Whether or not she was
16 going to push that, we didn't know. But I would say
17 that she was -- it seemed that she was sort of in
18 opposition to the other Board members I guess in their
19 concerns, that she didn't have some of those same
20 concerns I guess. Other than that, I mean nothing in
21 particular.

22 Q. Let's look at it maybe in terms of the materials from
23 Discovery Institute. You say you went over a videotape
24 that you think was called *Icons of Evolution*.

25 Did you get any DVD's at that time?

1 A. That is the one I can remember. I don't remember any
2 others.

3 Q. How about you mentioned some consideration of other
4 texts; what do you recall touching on that?

5 A. When we considered texts to put into the budget, we
6 looked at the prominent publishers. But we were given
7 copies of books that were used by other local Christian
8 schools and what textbooks they used.

9 Q. Do you know who provided that?

10 A. Mr. Baksa.

11 Q. Do you know whether -- do you recall Mr. Buckingham ever
12 requesting that?

13 A. I wasn't -- I don't remember if that came out of a
14 meeting or anything, no, that I was in attendance.

15 Q. In the packet that you have given us, there is a
16 document that says Survey of Biology Books Used in Area
17 Schools. Is that the document you are referring to,
18 Jen?

19 A. Yes.

20 Q. Behind that in the packet that we have marked Exhibit 2,
21 there is a Product Profile that references a text
22 *Biology* put out by Bob Jones University Press.

23 Do you recall any discussion of that text?

24 A. If I remember correctly, this came out of, again, one of
25 the meetings. My recollection is for some reason, I

1 think Bonsell -- I may be wrong -- mentioned that there
2 may be other textbooks out there that we could look at.
3 This was given to us by Mr. Baksa so I was assuming he
4 researched specific ones.

5 I don't know if he was told to research certain
6 ones or not, but this was given to us by him.

7 Q. How about any discussion of this text we are looking at
8 *Biology* by Bob Jones University Press, was that actually
9 discussed, or did you just get the piece of paper?

10 A. I don't believe that it was discussed at a meeting -- at
11 a specific Board curriculum meeting. I think Mr. Baksa
12 may have said to me or others, that this one we can't
13 use because of the context of it being specifically
14 Christians and God and things like that.

15 Q. Further down in this packet, there is a chart entitled
16 Beyond the Evolution Versus Creation Debate. You have a
17 notation on the top here that says given to me by Baksa,
18 spring 2004.

19 What do you recall about this document, Jen?

20 A. I found these documents in the front of my preview copy
21 of the textbook. So I don't think there was much
22 discussion, or maybe given to us saying look these over.
23 I don't believe there was much discussion about them.
24 This is sort of food for thought or background
25 information.

1 up for him or something to that effect.

2 Q. You mentioned that you think you have notes relating to
3 this meeting?

4 A. I do.

5 Q. Is that true, Jen?

6 MS. PENNY: Can we go off the record one second?

7 MR. GILLEN: Sure.

8 (An off-the-record discussion was had.)

9 (A recess was taken.)

10 AFTERNOON SESSION

11 MR. GILLEN: Please mark these.

12 (J. Miller Deposition Exhibits 4 through 6 were
13 marked.)

14 BY MR. GILLEN:

15 Q. Jen, I have given you packets of documents marked Miller
16 4 through 6. I ask you to take a quick look through
17 them and let me know if they appear to be the documents
18 that you provided to me this morning.

19 A. Yes.

20 Q. Now let's return our attention to the June, 2004 period
21 and that portion of Exhibit 3 which is your notes from
22 the June 14th meeting.

23 What I would like to do is go through those and
24 have you tell me what these notations reflect and to the
25 extent you can any memories they prompt. The page I am

1 looking at is entitled The Cutting Edge Hair Styling
2 Salon. There is June 24th below that heading. Above
3 the stationery that has been Xeroxed is the notation my
4 notes from June 14th Board meeting.

5 Are those your notes, Jen?

6 A. Yes.

7 Q. Tell me what those notations reflect.

8 A. Most of these are comments that were made. I tried to
9 write down things that people said at the meeting,
10 either Board members, or sometimes it was public
11 comment, that kind of thing.

12 Q. So the first one is Bonsell, Intelligent Design Theory.
13 What is that?

14 A. I am thinking that he mentioned Intelligent Design
15 Theory at the meeting, and I may have put a question
16 mark behind it because of the word theory. That was my
17 notation that, you know, I didn't believe it was a
18 scientific theory.

19 Q. Let me ask you: Prior to this June 14th notation, had
20 you heard of Intelligent Design?

21 A. I don't have anything written down so it was about this
22 time that the Intelligent Design issue came up.

23 Q. And your comment seems to indicate that there was some
24 reflection on the topic. Prior to this June 14th
25 meeting, had you done any research prior to that

1 meeting?

2 A. I don't believe so, no.

3 Q. Looking at it in light of those observations you have
4 just made, do you think that you would have had a
5 question about Intelligent Design and its status as a
6 theory on this day?

7 A. Yes, I think that's why I had the question marks. It
8 was either that reason or that I hadn't heard of it
9 before.

10 Q. How about papers should stick to reporting the facts,
11 does that trigger any --

12 A. That was something Bonsell had said addressing the
13 newspaper reporters, that they should stick to reporting
14 the facts.

15 Q. Mistrust between students, parents and teachers, does
16 that trigger anything?

17 A. Just that he may have said something that maybe them not
18 reporting the facts or that because of this, there is a
19 mistrust between the students, parents and teachers.

20 Q. You have a notation for Casey. I take it Casey Brown?

21 A. Yes.

22 Q. One nation, equal rights, sworn to uphold the law, set
23 aside personal beliefs, does that trigger any
24 recollections on your part?

25 A. She quoted that or she said that at the meeting.

1 Q. And a notation with Noel, I take it Noel Wenrich?

2 A. Yes.

3 Q. Says all teach of a creation?

4 A. By that I remember that he mentioned all religions, no
5 matter what religion it is, teach of a creation of some
6 sort or a creator of some sort.

7 Q. Do you have any recollection as to how that came up?

8 A. During this time, there was a lot of public comment and
9 comment in the newspaper about the textbooks. And I
10 know the quote was in there about being laced with
11 Darwinism and that kind of thing.

12 Creationism came up. I don't remember how
13 exactly, but it was part of these conversations at the
14 Board meetings.

15 Q. Let me ask you: Do you remember Barrie Callahan being
16 at these Board meetings?

17 A. Yes.

18 Q. Do you have any recollection of Mrs. Callahan accusing
19 Mr. Buckingham of wanting to teach Creationism?

20 A. I was thinking I had -- no, not in this meeting. I
21 didn't quote her as saying anything. I don't remember.
22 I know she spoke several times. If I don't have it
23 written down so I don't remember if she said anything.

24 Q. Can you recall anything about her comments?

25 A. I know -- again, I don't know what meeting this was at.

1 I guess this would have been afterwards. I remember her
2 making a comment something about the origin of life and
3 Intelligent Design.

4 On the curriculum, it says no origins of life will
5 be taught. She said it is contradictory to say no
6 origins of life will be taught and then put Intelligent
7 Design into the curriculum.

8 That was later. So I don't remember anything in
9 particular at these meetings.

10 Q. If we flip to the next page, it has a notation on the
11 top Evolution with a sort of cloud circle around it.
12 Not origin of life, change over time.

13 Is that your notation?

14 A. Yes, that is just probably my thoughts. I tend to write
15 things down. As people are speaking, I write my
16 thoughts or my sort of response to them even though I
17 don't speak it.

18 I think this was my response to things that I had
19 heard. That Evolution was -- I don't see -- as I have
20 told them in curriculum committee meetings, Evolution is
21 not the origin of life. It simply means change over
22 time. And that is what we teach.

23 Q. Beneath the notation I just referenced, there is another
24 comment appalled at saying I'm not a good Christian.

25 Was that your observation, Jen?

- 1 A. Not that I remember, no.
- 2 Q. Sheila Harkins?
- 3 A. No.
- 4 Q. Angie Yingling?
- 5 A. Not at this one, no.
- 6 Q. How about Jane Cleaver?
- 7 A. No.
- 8 Q. You have one comment attributed to Noel Wenrich. Do you
- 9 remember anything else he might have said?
- 10 A. Not at this meeting, no.
- 11 Q. So this is the second meeting in June. I want you to
- 12 look now at Exhibit 4.
- 13 A. (Witness complies.) All right.
- 14 Q. If you look at the second page of Exhibit 4, it has the
- 15 number one circled in the right-hand corner. If you
- 16 look there, you will see a notation to June, 2004 and a
- 17 curriculum committee meeting?
- 18 A. Yes, I see it.
- 19 Q. Does that notation reflect your sense of whatever
- 20 understanding you had coming away from that meeting?
- 21 A. Yes. And I believe if I remember correctly, that was
- 22 the day of the Board meeting because I think that that
- 23 was the very last meeting we had of the school year.
- 24 That would have been the 14th, and we went to the Board
- 25 meeting that night.

1 Q. Now that puts us into July. I see that on the last page
2 you just referred to, page number one in Exhibit 4,
3 there is a notation there relating to July, 2004?

4 A. Yes.

5 Q. It references a new edition of the Miller and Levin
6 text?

7 A. Yes.

8 Q. Tell me about that.

9 A. Again when we left the June meeting, we were assured
10 that we would get our books. And then somehow I found
11 out -- I was in the District in July -- middle of July,
12 I think it was around the 18th or 19th because I was in
13 charge of planning the inservice time for this year. I
14 was in the District.

15 And I don't remember if -- I am pretty sure Mrs.
16 Spahr called me at home one evening and said that they
17 passed on the books some time in here, end of June,
18 early July they passed on approving the books because
19 there was a new edition that came out.

20 It was no use ordering a 2002 edition when the new
21 one had just come out.

22 Q. And they is the Board?

23 A. Yes.

24 Q. So what happened next?

25 A. Somewhere around there, I think it was the second day I

1 was here for planning those inservices, we met with --
2 it was either in Dr. Nilsen's or Mr. Baksa's office, we
3 page by page, chapter by chapter, line by line went
4 through the evolution chapters in the 2002 edition and
5 2004 edition to review if there was any difference
6 between 2002 and 2004.

7 Q. If you would, Jen, please look at Miller Exhibit 2 for
8 this page which is entitled Changes in 2002 and 2004
9 Copyright Biology books from Prentice Hall.

10 A. (Witness complies.)

11 Q. Looking at that, Jen, does that reflect your findings as
12 a result of the examination you have just described?

13 A. Yes.

14 Q. And apart from the notations here -- or tell me in
15 general what sense you had about differences in the two
16 texts.

17 A. We felt that the 2004 edition as far as this controversy
18 goes was much -- I don't know if I want to say it
19 didn't -- it seemed to be aware of the controversy
20 because I thought it took a lot of the more
21 controversial statements out and replaced them with sort
22 of blander language if you want to say it that way.

23 Q. Let me ask you: In terms of concern that had been
24 expressed about presenting theory as fact, did you see
25 the changes addressing the manner of presentation of

1 Evolutionary Theory?

2 A. Yes. And even a lot of Mr. Buckingham's concerns that
3 he had given us originally with some of the references
4 to man's Evolution were taken out, or -- you know, the
5 wording was much better, less controversial.

6 Q. I want to make sure I understand you there, Jen. Would
7 you say that the wording was changed in such a way as to
8 make assertions in that area seem more tentative? Let
9 me put it this way: Less factual and more theoretical?

10 A. Not -- not necessarily. Maybe to some extent. But I
11 don't -- I guess because coming -- me looking even at
12 the 2002 edition, I didn't see it necessarily as it was
13 presented as a fact in the first place. That was
14 somebody else's concern.

15 Me looking at it, I wouldn't say that necessarily.
16 But for someone else looking at it that had concerns,
17 then maybe they could see it that way.

18 Q. That is all I am getting at. You had a sense that the
19 changes addressed his concerns. I am trying to figure
20 out how.

21 A. Yes, I am trying to look over some of the things to give
22 you an example. Here like at number three instead of
23 whatever it was presented as evidence of Evolution, it
24 was replaced with could finally explain many of his
25 observations. It just looks like it is not as strong

1 language I guess you want to say.

2 It did seem like there was more that pointed out
3 some -- that made sure they pointed out where the gaps
4 were, or where there was less evidence in the field of
5 Evolution than the previous edition did.

6 Q. Okay. Did you have any discussion with Mr. Buckingham,
7 yourself, about these findings?

8 A. No.

9 Q. I think you said that you sat down with Bert Spahr and
10 Mike Baksa?

11 A. Yes.

12 Q. And I see here at the head of this page, there is a
13 notation July of 2004?

14 A. Yes.

15 Q. Is that the time of the meeting?

16 A. Yes. I remember somewhere around the 18th or 19th.
17 Yes, because I think that was the days I was here to
18 plan the inservices.

19 Q. Do you recall anything that Bert Spahr said during the
20 meeting?

21 A. No, nothing in particular, other than the books hadn't
22 been, you know, approved because of the 2004 edition.
23 Nothing in particular.

24 Q. How about Mike Baksa, do you remember anything that he
25 said?

1 A. We were pretty much in agreement that this seemed to
2 present it in a much less controversial way, but I don't
3 know.

4 Q. Did you anticipate any action as a result of your
5 meeting when you left this meeting?

6 A. I remember thinking that they should be -- having a
7 discussion that the Board should be more satisfied with
8 this edition perhaps than they were with the 2002
9 edition.

10 This is the time when I was here that Mr. Baksa
11 gave me a copy of *Of Pandas and People* to read, this
12 meeting.

13 Q. Thank you. I was going to ask you about that. This
14 meeting was kind of mid July?

15 A. Yes.

16 Q. Do you recall any discussion of *Of Pandas* at that time?

17 A. No. I think I was given the book, asked to take it
18 home, read over it, get back to him and tell him what I
19 thought, that kind of thing.

20 Q. Was Bert Spahr given a copy as well?

21 A. I don't recall at that meeting if she was or not. I
22 know she read it because I remember her making specific
23 comments about certain parts of the book later on. But
24 I don't remember if it was at that meeting or not.

25 Q. Did you get back to Mike with feedback about your

1 opinion on *Of Pandas*?

2 A. I don't think that -- I know that my opinions were made
3 at another meeting in the fall. I don't remember if we
4 were in contact before then, before school was back in
5 session about the *Of Pandas* book.

6 Q. Let's look at Exhibit 3, the minutes for the July 12th
7 meeting. Did you attend that meeting?

8 A. I would have to look.

9 Q. Okay.

10 A. July 12th?

11 Q. Yes.

12 A. The minutes are not in here in Exhibit 3.

13 Q. There is an SB set.

14 A. There, they are. Okay. Let me see.

15 Q. I see you have no notes from the meeting?

16 A. Right.

17 Q. I am just wondering if you may have attended and taken
18 no notes.

19 A. I do not believe I was at that meeting because as I see
20 here in the minutes, that was the meeting where they
21 tabled to the next meeting the approval of the textbook.
22 I was not at that meeting.

23 Q. Good enough. That brings us to the August 2nd meeting.
24 Did you go to that one?

25 A. No, I was on vacation at that time.

1 Q. You picked a good time to be on vacation. When did you
2 return from vacation?

3 A. It was somewhere shortly after there. It was the first
4 week of August that we went. We left like July 31st.

5 Q. Upon your return, were you greeted with any news
6 relating to the biology text or the biology curriculum?

7 A. Yes. I believe -- I think it was Rob Eshbach told me
8 that at that meeting, Mrs. Harkins said something --
9 they mentioned the *Of Pandas* book, and she mentioned
10 that I had the copy, and I had had it for several weeks.
11 And she didn't get a chance to look over it because I
12 had the copy.

13 So I don't remember if I was in contact with Mr.
14 Baksa, if he asked for me to bring it back, or did I
15 have a chance to look over it. But I did bring it back
16 in at some point.

17 Q. At some point?

18 A. Yes.

19 Q. Let me ask you a question. If you look at Miller 4 and
20 the page with the one circled in the upper right-hand
21 corner, there is a notation down there relating to
22 August, 2004 Board vote?

23 A. Yes.

24 Q. Where did you get that information?

25 A. That's Bertha Spahr's handwriting. She put it in the

1 timeline. I do remember them telling me that the -- at
2 that meeting, I mean this is what I was told, that they
3 were up to approve the biology textbooks again, and
4 Mr. Buckingham said he would approve it if *Of Pandas and*
5 *People* was also approved as a supplemental text.

6 There was a five/three split, and someone
7 switched, and it was four/four. And they approved the
8 textbooks finally.

9 Q. Let me ask you, Jen, Miller 4, is that a document that
10 you created?

11 A. On top?

12 Q. Yes, the first page of four.

13 A. No, that is Mrs. Spahr's handwriting.

14 Q. You have indicated that the next page is as well?

15 A. Yes.

16 Q. Was this created by her?

17 A. Yes. We had input. I mean as we tried to remember
18 dates, we sat down together and tried to remember when
19 did this happen, when did this happen.

20 Q. That's fine. There is a reference on page two of
21 Exhibit 4 to an August 30th, 2004 curriculum committee
22 meeting?

23 A. Yes.

24 Q. Did you attend that meeting?

25 A. Yes.

1 Q. Now let's look at the time in August between your return
2 from vacation and prior to this meeting. Had you had
3 any discussions with Bert Spahr about *Of Pandas*?

4 A. I believe so. I believe she had read it. And whether
5 it was on the phone, probably a phone conversation,
6 discussing sort of our thoughts as we read it.

7 Q. You had reviewed it as of this telephone conversation?

8 A. Yes, yes.

9 Q. What did Bert Spahr tell you about her opinion
10 concerning *Of Pandas*?

11 A. I remember her pointing out some of the science was
12 faulty in it. I remember her saying something I think
13 it was Oparin Theory, that was a chemistry theory, and
14 she was upset at how they portrayed that.

15 Q. Did she say why?

16 A. I don't remember the chemistry of it.

17 Q. It was a chemistry related --

18 A. Yes, yes. I think that is who it was. But also that
19 she was having trouble reading it because the level was
20 very high.

21 And I had done -- during this time before this
22 August 30th meeting, I had done a readability study on
23 it -- two different readability studies online. So we
24 discussed that also.

25 Q. How do you do that, Jen?

1 A. You go on -- it is a typical when you are reviewing
2 textbooks -- we learned this in our undergraduate study
3 -- when you are reviewing textbooks, you look at a
4 readability, and it tells you what grade level it is
5 geared towards.

6 You put in how many words in a sentence and how
7 many syllables in each word. You have to count them out
8 and things like that. And it gives you a grade level of
9 the *Of Pandas* book.

10 Q. Apart from what Bert said about this chemical theory,
11 did she say anything else?

12 A. The two big things I can remember is that, you know, a
13 lot of the things were -- some of the inferences made
14 was, you know, bad science and the reading level. Those
15 are the two things that I can remember.

16 Q. How about you for your part?

17 A. Some of the same things. I remember having sticky
18 notes. I took them out when I gave them back. I don't
19 know where they are now. I remember having sticky notes
20 pointing to things and having questions about certain
21 parts. I know that I don't have those anymore. I can't
22 say specifically, but.

23 Q. That is all right. Did you talk to any of your other
24 colleagues about *Of Pandas* prior to this August 30th
25 meeting?

1 A. Not that I can remember.

2 Q. Did you talk to my Board members?

3 A. No.

4 Q. How about any other of the plaintiffs?

5 A. No.

6 Q. How about Barrie Callahan?

7 A. No.

8 Q. We have a note indicating there was an August 30th
9 curriculum committee meeting. Do you remember that?

10 A. Yes.

11 Q. Tell me what you can remember about that.

12 A. That was a meeting -- again, we were talking mainly
13 about the *Of Pandas and People* book. And if I am not
14 mistaken, this is the meeting that the curriculum
15 committee was there. And Mr. Bonsell was there, too.

16 This is one of them -- it might have been the next
17 one that he was at back from the 2003 meeting, and we
18 were discussing -- we, the Science Department, and again
19 probably mostly Bertha Spahr and I were the spokesmen
20 there. I don't remember exactly who all was there.

21 We were discussing the *Of Pandas* book. Our
22 concerns with the readability study, our concerns with
23 some of the science of it in the textbook. The
24 readability was definitely not appropriate for a ninth
25 grade level.

1 And I remember Bertha asking again point blank to
2 Mr. Buckingham if he could explain some of the things in
3 there. And he mentioned that any good student will go
4 home and look it up. You don't need to understand it as
5 you are reading it.

6 That point -- at some point, I believe Dr. Nilsen
7 was at that meeting. My recollection is that his
8 suggestion was sort of a compromise, that we place the
9 books in the classroom as a reference and not
10 necessarily hand it out to each student.

11 I do remember Mr. Bonsell I believe at that
12 meeting because I believe Mr. Buckingham did leave early
13 for some doctor's appointment at that meeting, and
14 Mr. Bonsell saying after he left not every Board member
15 is in agreement with Mr. Buckingham that it should be in
16 the hands of every student. That maybe placing it as a
17 reference would be a better use of the textbook.

18 Q. Okay. Let's see. Do you remember anything -- do you
19 know if Sheila Harkins was there?

20 A. Yes, I believe -- it says curriculum committee, yes, she
21 was there.

22 Q. Do you recall anything that Sheila Harkins said?

23 A. I believe it was at this meeting that, again, we
24 explained how we teach Evolution. And my recollection
25 is that at that meeting is when Sheila said after I

1 explained how we teach Evolution that she said if
2 everyone did it like Jen did, then there won't be a
3 problem. This would be fine. I agree with everything
4 Jen just said.

5 Q. And how about Casey Brown, was she there?

6 A. I believe so, yes.

7 Q. Do you recall anything she said?

8 A. Not -- no. Not that I can put my finger on.

9 Q. What about the idea of putting it in the text -- the
10 text *Of Pandas* in the classroom as a reference? How did
11 you and Bert Spahr as faculty respond to that?

12 A. Let's say that we didn't like the book necessarily in
13 the classroom at all. But again, I think that we had
14 said that we would be willing to compromise. If they
15 wanted to get a couple for the classroom, not -- I am
16 pretty sure that at that point, it was just what if we
17 got five, two, three to five books per classroom. If
18 kids wanted to look at it, they could take it home.

19 I don't think we were too keen on the idea of
20 having it there. But if it was to be a compromise to
21 having every student have it, then we would be willing
22 to have a couple of copies if kids wanted to take it
23 home.

24 Q. What was driving your objection, Jen, to them having it?
25 What was your concern to the students having the book?

1 A. Several things. It's not -- we teach to the standards.
2 It is not in the standards. At that point, it wasn't in
3 the curriculum.

4 Again, we thought parts of that was too high of a
5 reading level for our ninth graders. And some of the
6 science, we didn't believe was sound.

7 Q. Okay. And anything else you took with you from that
8 meeting, Jen? Did you have a sense that there was a
9 resolution?

10 A. Again, yeah, that we felt that okay, if we were going to
11 get these *Of Pandas* books, we would get several copies
12 to be placed in the classroom as a reference and be
13 done.

14 Q. Do you recall a discussion of Intelligent Design at that
15 time?

16 A. Well, since the *Of Pandas* book goes over Intelligent
17 Design, I would say yes.

18 Q. How about was there any discussion of curriculum change
19 related to the use of *Of Pandas*?

20 A. No. I don't believe there was at that point.

21 Q. Did you see any future developments that would be
22 resulting from the meeting when you left? Did you think
23 there was going to be more deliberations on the part of
24 the Board curriculum committee, or were you just kind of
25 uncertain where things were?

1 A. I think yeah, probably more uncertain or thinking again
2 where is this going type thing.

3 Q. Okay. That would bring us into September. Let me ask
4 you: Did you attend any Board meetings in September?

5 A. Yes.

6 Q. You did?

7 A. I have notes from a September 14th meeting. I can't be
8 sure because I don't have the minutes attached, but it
9 was some time I believe in September.

10 Q. And you are looking at the notes which are in Miller
11 Exhibit 3 which have a notation in the upper right-hand
12 corner My Notes from the Board Meeting In September I
13 think?

14 A. Yes.

15 Q. Looking at that, Jen, why do you think it is from
16 September?

17 A. Probably because of where it was maybe in my stack of
18 stuff, that it was before October. So I was assuming
19 that it was before the actual curriculum change
20 implementation took place in October.

21 Q. There's some notations here. The first is one that is
22 linked to Barrie Callahan?

23 A. Yes.

24 Q. And it indicates she is asking the question about what
25 will happen with *Of Pandas and People*. Does that

1 notation you made, does it trigger any recollection
2 about what Barrie Callahan said at the meeting?

3 A. I think she was asking what are they going to do with *Of*
4 *Pandas and People*. Where are they going to put it? Is
5 it going to be a supplemental text? Are they going to
6 put it in the classroom, that type of thing.

7 Q. Is Barrie Callahan speaking during the public comment
8 portion of the meeting?

9 A. Yes.

10 Q. Do you recall if it was during the beginning of the
11 meeting or during it?

12 A. I assume it was at the beginning, but I couldn't be
13 sure.

14 Q. There is an comment there attributed to Larry Snook?

15 A. Yes.

16 Q. What is that comment getting at? What is that notation
17 getting at?

18 A. He must have asked the question about Act 72, and then
19 asked -- I think probably something like we're having
20 discussions about Act 72, and so how can we then spend
21 money on a second textbook? When it is foolish where we
22 cut other monies from other places, why spend money on
23 the second textbook *Of Pandas and People*?

24 Q. What is Act 72?

25 A. How do I explain that? Act 72 is the gambling, whether

1 we take state money from gambling.

2 Q. Then there is a notation for Amanda Heilman?

3 A. I'm assuming just a community member. I wrote down her
4 name. I don't really remember much. I am assuming she
5 said something close to that.

6 Q. What I am trying to do, Jen, is just get a sense for
7 these comments are being offered at the public portion
8 of the meeting.

9 With Barrie Callahan, I can see she's still
10 wondering what is going to happen to *Of Pandas*. Did
11 these other people's comments follow on hers?

12 A. I believe so, yes. Yes.

13 Q. Do you recall any comments by Board members made in
14 response to any of the comments reflected on this page?

15 A. No. I think at this time they had pretty much toned
16 down their comments, or they were not speaking out as
17 much as they had been in June of that year.

18 Q. This is the September Board meeting. We know *Of Pandas*
19 is still at issue so to speak?

20 A. Yes.

21 Q. If you look at September, do you recall any meetings of
22 the Board curriculum committee?

23 A. No. I would say not because we don't have them
24 recorded. So I would say not.

25 Q. Do you recall any discussions with your colleagues about

1 the issue of *Of Pandas*?

2 A. Not anything in particular. I am sure we were
3 discussing it, but I don't remember, you know. Have you
4 heard anything, that kind of thing, what's going on with
5 the books, but nothing in particular.

6 Q. Let me ask you as a teacher now, the book that you
7 recommended has been approved on August 2nd?

8 A. Yes.

9 Q. And there is this notion of bringing another book as a
10 supplementary text?

11 A. Yes.

12 Q. You have got a Board curriculum committee meeting in
13 August. Is there still -- and Mr. Buckingham was there.

14 Is anyone still accusing him of wanting to teach
15 Creationism; is that still a flash point, or are we
16 focused on the use of the text? What is the state of
17 affairs at that August 30th Board meeting?

18 A. At the Board meeting?

19 Q. Curriculum meeting, I'm sorry.

20 A. Let me read her notes again. I think at this point,
21 most of it was the book. I believe there was still some
22 discussion of Intelligent Design versus Creationism
23 because I think maybe at this Board meeting is where
24 Mrs. Spahr brought again some of her court cases. And
25 in one of them, it had something about Intelligent

1 Design, you know, may you teach Intelligent Design in a
2 biology classroom.

3 And she had -- I don't know - opinions or
4 something of someone. I don't know where she printed it
5 off the Internet, the research she had done.

6 There was still some discussion of not just the
7 textbook, but Intelligent Design, is it the same as
8 Creationism, is it different than Creationism, yes.

9 Q. If we turn our mind back to the August 30th Board
10 curriculum committee meeting with Mr. Bonsell there and
11 so on and focus on this equation or this linkage here
12 that some people are making, do you recall Mr. Bonsell
13 speaking to that linkage, whether Intelligent Design was
14 Creationism or distinct, whether it was a scientific
15 theory?

16 A. No, I can't remember anything in particular. Obviously,
17 I did get a sense -- and I can't remember anything
18 particular that he said, but I did get a sense that he
19 did believe that Intelligent Design was separate from
20 Creationism and could be presented in a biology
21 classroom, and that's why the *Of Pandas and People* book
22 was there.

23 Like I said, I can't remember any specific quotes,
24 but that's the sense that I came away with.

25 Q. That he was viewing Intelligent Design as not

1 Creationism --

2 A. Yes.

3 Q. -- and therefore appropriate?

4 A. Yes.

5 Q. How about Bill Buckingham, did he say anything at that
6 meeting of August 30th about that?

7 A. I can't remember anything in particular, no. But it
8 seemed that, you know, they were all pretty much in
9 agreement I would say.

10 Casey Brown, I am assuming she was there, but she
11 would have not been in agreement with adding Intelligent
12 Design and the *Pandas* book.

13 But the other two seemed like they were in
14 agreement with Mr. Bonsell.

15 Q. And your sense for Casey Brown's position, what are you
16 relying on there, Jen?

17 A. Statements -- again, I can't remember any particular
18 statement, but statements that were made at different
19 meetings. Again, it sort of goes back to is this
20 religion, and we should stay away from this, that type
21 of thing. I guess looking at it the same way we were,
22 is it a science, that kind of thing.

23 Q. Was it your sense that Casey Brown equated Creationism
24 and Intelligent Design, or how did you see her position?

25 A. I would say that -- I don't know if she equated it, but

1 she thought there was enough gray area there, that we
2 should stay away from putting it in. There was enough
3 gray area there that it could be construed as
4 Creationism or whatever.

5 Q. And that is something that has occurred to me as we are
6 talking. Bert Spahr, you think she showed up to this
7 meeting with some legal opinions?

8 A. Yes.

9 Q. Was there a discussion of the potential liability?

10 A. Yes.

11 Q. Did Bert Spahr speak specifically to that?

12 A. Yes. I know she read part of her -- whatever she had
13 printed off word for word. I remember her saying
14 several times what part of the legal and
15 unconstitutional - she used three words there -- don't
16 you understand. So yes, there was some discussion of
17 that, yes.

18 Q. And how about the Board members who were present at the
19 meeting, did they respond to that?

20 A. I think some questions were asked, where are you getting
21 your information, who are you getting your information
22 from. The information we get is saying that you can
23 present this. So there was sort of this back and forth.
24 The information we are getting is saying we can't
25 present this, and the information saying we can. So,

1 yes.

2 Q. Do you remember anyone saying we are going to be sued?

3 A. No, not particularly. If anyone, it would have been
4 Casey Brown because that was her concern mostly. But I
5 couldn't say that she definitely said it at that
6 meeting.

7 Q. How about Bert Spahr, was she concerned again for the
8 untenured teachers?

9 A. Yes.

10 Q. Did she bring that to the attention of the Board
11 members?

12 A. Yes.

13 Q. Do you recall any response by Board members?

14 A. No.

15 Q. If you would, Jen, I would ask you to look at Exhibit 5.
16 About a quarter of the way through the packet, there is
17 an e-mail from Stephen Russell dated August 26th?

18 A. Yes I will find it. There it is, yes.

19 Q. Would you take a quick look at that?

20 A. (Witness complies.)

21 Q. There is a notation in the upper right-hand corner. Is
22 that your handwriting?

23 A. Yes.

24 Q. This is the same meeting, right, the August 30th, 2004
25 meeting?

1 A. Yes.

2 Q. There are notations it looks like in another hand below
3 yours on the first page of that e-mail?

4 A. Yes.

5 Q. Whose handwriting is that?

6 A. That would be Rob Eshbach's.

7 Q. And I see there some comments which seem to reflect the
8 criticisms you had advanced of the text of *Of Pandas*
9 earlier; is that accurate?

10 A. In the middle here?

11 Q. Yes.

12 A. Yes. I am assuming that is what he had there about the
13 grade level, yes.

14 Q. And a comment at the bottom attributed to
15 Mr. Buckingham, each student be given this book with
16 textbook, that was his stated position before he left
17 that meeting; correct?

18 A. Yes.

19 Q. Looking at this, does it make you think there was some
20 discussion just along the lines you suggested of we
21 don't think we will be sued?

22 A. Yes, yes. And as I recall, this was handed out to show
23 Steve Russell, who would have been the District
24 Solicitor, their opinion on this issue.

25 Q. And looking at September again, do you recall anything

1 else that happened in September that touched on these
2 two issues? Now it is the *Of Pandas* text and the
3 curriculum change.

4 A. No, I can't pinpoint anything.

5 Q. When *Of Pandas* was discussed at the August 30th meeting,
6 did you have any discussion relating to what would be
7 presented in the classroom?

8 A. Wow! I am sure we did. I am trying to think. At that
9 point, I don't think that that was discussed too much.
10 Just maybe at that point that we mentioned that there is
11 this book, again, if the students want to use it, they
12 can, or have it available to them in the classroom, that
13 type of thing. I don't remember much other than that.

14 Q. Let me be more specific. It seems like at the
15 August 30th meeting from what you told me the issue is
16 in what way the text *Of Pandas* is going to be in the
17 classroom. It has been donated.

18 Is it going to be as a reference text, or is each
19 student going to get it; is that correct?

20 A. At that point, it wasn't donated I don't think. At that
21 point, I don't think we knew how we were getting the
22 textbooks. It was before it was donated.

23 Q. Fair enough. But am I correct that those were the
24 options that were being discussed?

25 A. Right. Whether every student gets a copy to be handed

1 out with the textbook, or whether there is several in
2 the classroom or a whole classroom set, that kind of
3 thing.

4 Q. I think you said that you thought if it was in the class
5 as a reference text, that was more acceptable to you?

6 A. Right. More acceptable than handing it out to every
7 student, yes.

8 Q. Did you think that this was going to change your
9 classroom instruction?

10 A. At that point, other than having to mention this book,
11 no. I mean mentioning the book would have been
12 different than what I had done in the past.

13 Q. But in terms of your presentation of Evolutionary
14 Theory, did you see any impact being discussed?

15 A. No. At that point, I did not think it would be any
16 different.

17 Q. So from -- and nothing else in September, right?

18 A. Not that I can remember.

19 Q. So we move into October. And there's a note on Exhibit
20 4, the page with two circled in the upper right-hand
21 corner, that references October 8, 2004.

22 A. Yes.

23 Q. Take a look at that notation.

24 A. (Witness complies.)

25 Q. Do you have a recollection of a meeting on October 8th?

1 reference to an October 4th, 2004 School Board meeting?

2 A. October 4th?

3 Q. Yes. At the top there, they generally approve the
4 minutes. All I want to know, Jen, is if you went to
5 that October 4, 2004 meeting?

6 A. Let me look and see if something brings -- it is looking
7 familiar. I would say there is a good possibility that
8 I went, yes. Yeah. I am pretty sure that I went to
9 this meeting.

10 Q. Do you recall any discussion of the biology curriculum
11 at the October 4, 2004 Board meeting?

12 A. No, I believe that that was the meeting that it was just
13 put in the curriculum that it was just like a FYI, that
14 the Superintendent was approving the donation of two
15 classroom sets of *Of Pandas and People*.

16 Q. Okay. Now so that brings us to this October 8th meeting
17 in which you recall a draft being presented to you?

18 A. Well, the draft was not presented to us at the 18th
19 Board meeting. It was before that.

20 Q. You are right. I am referring to the October 8th
21 meeting.

22 A. Okay. Not a Board meeting, but a --

23 Q. Right.

24 A. Right.

25 Q. And it was during that meeting, if I understand you

1 correctly, that the document labeled draft was presented
2 to you; correct?

3 A. Yes.

4 Q. And that document has the notation in the upper
5 right-hand corner that says spray adhesive for future
6 reference?

7 A. Yes.

8 Q. Tell me, Jen, what was your reaction to seeing the
9 draft?

10 A. We were very upset at seeing that.

11 Q. And why?

12 A. Again as I said, it seemed like when we came out of a
13 lot of these meetings, that things had been settled.
14 Again at that August 30th meeting, we were in agreement
15 that okay, if we needed to the reference of *Of Pandas*
16 and *People* would be in the classroom, but again we
17 didn't want Intelligent Design. We were uncomfortable
18 having to teach it or, you know, having to present it.
19 And then we get this that says that they will be made
20 aware of Intelligent Design.

21 Q. Okay. Who was at the October 8th meeting?

22 A. I believe that one was just in my room. I think Baksa
23 came over or Bertha was there. At that point, I believe
24 -- although I can't be sure -- Rob Eshbach I think was
25 definitely there and possibly Leslie Prall and Bob

1 Linker since they were biology teachers also.

2 Q. Do you recall if Mike called you up and said I am coming
3 over with a proposed curriculum change?

4 A. I believe, yes.

5 Q. Do you recall anything else Mike Baksa said to you?

6 A. No.

7 Q. You indicated that you felt somewhat surprised by this?

8 A. Yes.

9 Q. How about Bert Spahr, what was her reaction?

10 A. Surprised, angry.

11 Q. If you look at the page where we are referring to with
12 the draft stamped across the middle in the right hand
13 lower corner, there is a reference *Of Pandas and People*?

14 A. Yes.

15 Q. Then there is some little handwritten hash mark there.
16 Did that portion of it surprise you?

17 A. Yes. We were upset with that portion also because we
18 don't list any other reference textbooks in our
19 curriculum. If you look through the biology curriculum,
20 nowhere is there listed a reference text. And we all
21 have reference texts that we have in our classrooms,
22 other biology books that students can use.

23 I have a science encyclopedia in our classroom. I
24 don't list that necessarily because that could be --
25 students could use it at any time. We were upset that

1 that one was singled out.

2 Q. And why? What was it about the singling out that you
3 saw as inappropriate?

4 A. Again at that point, we were unsure putting these words
5 and putting this in our actual curriculum, now we are
6 asking the question okay, do we have to teach this, do
7 we have to specifically teach from the text, that kind
8 of thing.

9 By putting it in there as part of our curriculum,
10 those are the kinds of questions that came up that we
11 were very uncomfortable with teaching Intelligent
12 Design, teaching from the textbook, and that kind of
13 thing.

14 Q. Did you have any discussion at this October 8th meeting
15 about whether you would be required to teach Intelligent
16 Design?

17 A. I think so. I remember at some point asking for
18 specific direction, what are we to say, what are we to
19 do in regards to this.

20 Q. And in regards to this, do you mean the curriculum
21 change which says students will be made aware of
22 gaps/problems in Darwin's Theory and of other theories
23 of Evolution including, but not limited, to Intelligent
24 Design?

25 A. Yes.

1 Q. There is a reference there to gaps/problems in Darwin's
2 Theory. Did that surprise you?

3 A. No, because that is what we had agreed to in June I
4 guess it was, that we would be willing to point out up
5 to that point.

6 Q. How about the reference to other Theories of Evolution;
7 had that been discussed?

8 A. I believe that we did discuss that because in our
9 textbook, it does talk about things that led up to
10 Darwin's -- his theory of natural selection; that there
11 are -- Lemarck is in there and some other scientists
12 that sort of influenced Darwin. That we felt was okay
13 because those were what led up to the formulation of his
14 theories.

15 Q. So you indicated that you had some questions. How about
16 Bert Spahr, did she have questions?

17 A. Yes.

18 Q. Do you recall what she said?

19 A. I have to get my timeline straight. I don't think that
20 it was in -- I don't think it was in this meeting yet.
21 This I believe was just a quick meeting with just Mr.
22 Baksa. He handed this to us, asked us what we thought.

23 We said at that point, we don't want those words
24 Intelligent Design in our curriculum. We are okay up to
25 of other Theories of Evolution, period. And I remember

1 him taking that back to the curriculum committee I am
2 assuming at that point, that we wanted the reference of
3 *Of Pandas and People* off and we wanted the words
4 including, but not limited to, Intelligent Design out of
5 the curriculum.

6 Q. How about Rob Eshbach, do you recall him saying
7 anything?

8 A. I don't remember anything in particular, no.

9 Q. You indicated you had some concern about are we going to
10 be required to teach this. Did Mike Baksa address that
11 concern during this October 8th meeting?

12 A. To me at that point, I am remembering that it was still
13 up in the air. Because I remember that I asked that
14 question at the October 18th Board meeting of the Board.
15 So to me, I would think that it was all up in the air at
16 this point.

17 I don't know if we were unsure or he was unsure
18 exactly at this point what this meant, where they were
19 going to go with this.

20 Q. All right. If you look at the page of Miller 4 that has
21 two circled there in the upper right-hand corner,
22 there's two asterisks after the entry for October 8th
23 that say it looks like we have amended the curriculum to
24 remove ID from it, it is rejected by the committee.

25 Does that prompt any recollection on your part as

1 to what happened after you made your suggestions about
2 the draft?

3 A. Again, we told Mr. Baksa we wanted that out. And then I
4 am assuming that she put that in there -- it was
5 rejected by the committee simply because when we saw the
6 minutes for the October 18th meeting, it was included.
7 I mean that was one of the versions that was included.

8 So you know, I am not exactly sure. I don't
9 remember them coming back saying it was definitely
10 rejected by the committee or anything like that.
11 Nothing in particular.

12 Q. That is what I was asking. You say she, is that Bert
13 Spahr?

14 A. Yes.

15 Q. She created this document?

16 A. Yes.

17 Q. There is a note in there that refers to October 12th
18 through 15th?

19 A. Yes.

20 Q. So we have got a period here between an October meeting
21 where the teachers have said we want Intelligent Design
22 out, and then we know the Board meeting is on
23 October 18th.

24 If we focus on that period, do you recall further
25 discussions with the administration relating to the

1 proposed curriculum change?

2 A. Yes. I don't remember if it was -- I think it was in
3 this time that -- I know it was before the October 18th
4 Board meeting that Dr. Nilsen actually came to see me in
5 my room.

6 And this is when -- I believe it was he that told
7 me that Mr. Bonsell wanted to add the note at the bottom
8 origins of life will not be taught. I remember the
9 discussion that -- I remember him thinking that this
10 would then satisfy us, that if they put that note at the
11 bottom, that this is a good thing to put this at the
12 bottom.

13 So I don't know. It caused a little bit of
14 tension between -- with Mrs. Spahr because he came to
15 see me instead of going to her as Department head. I
16 remember she walked in when he was speaking to me about
17 it.

18 He wanted to know what was our concerns, again
19 state to him why we didn't like Intelligent Design in
20 there, why we didn't want *Of Pandas and People* in there.
21 I am positive that was before the October 18th Board
22 meeting.

23 Q. Do you recall what you told Dr. Nilsen?

24 A. Same things. We were concerned do we have to teach
25 this. And I explained about the reference texts, that

1 we don't list any others.

2 He explained to me that if students are going to
3 take it home, that it had to be listed as a reference.
4 So that if a parent said why does my student have this,
5 if it is in the curriculum, then we're covered if it is
6 there. So that was his explanation to me. I remember
7 that explanation.

8 I remember him coming to me, which I thought was
9 odd, him sitting down with me and the first thing he
10 said was Jen, we just want to let you know, Mr. Bonsell
11 and I have been talking, and we think you would make a
12 great Department head. That is how he started his
13 conversation.

14 Q. Do you recall him responding to your concern about
15 whether you would have to teach Intelligent Design?

16 A. Nothing directly. I can't be sure, but he may have said
17 something like well, that we'll deal with, or we are
18 going to work on that, or something to that effect.
19 Nothing in great particular at that point.

20 Q. Did you in this period between August 30th and the
21 October 18th, 2004 Board meeting, did you have any
22 discussion with your colleagues about the language of
23 this curriculum entry students will be made aware of?

24 A. Yes. Basically, we wanted to know what that meant. Did
25 that mean -- mentioning it, did that mean making them

1 aware of what the theory is? How in detail does it mean
2 make aware of?

3 We thought that was very vague. We weren't sure
4 what that entailed. At that point, we were still
5 questioning what that meant.

6 Q. And if I am understanding you correctly when you get to
7 do we have to teach it, it is because you don't want to
8 have to teach it; is that right, Jen?

9 A. Exactly.

10 Q. And that's for the reasons you stated earlier?

11 A. Yes.

12 Q. Just generally, what were they, again?

13 A. Again as a -- I guess you can say as a Science
14 Department or me in particular, I don't think that
15 Intelligent Design is -- I don't think it falls under
16 the parameter of science. Science is testable. I don't
17 think that you can create a test for an intelligent
18 designer.

19 If there was proof that there was an intelligent
20 designer or a God out there, there wouldn't be any
21 atheists because there would be proof. I don't think
22 that you can design a test, which is what science is,
23 that is going to prove that there is definitely an
24 intelligent designer there. Therefore, it doesn't fall
25 under the realm of science.

1 Q. Anything else that you are --

2 A. Again, we were worried about is this -- we didn't
3 necessarily -- I think I have this in some of my quotes
4 in the newspapers or articles that we didn't want to be
5 the test case if we were the first School District to
6 approve this.

7 Again, worried about lawsuits. Does this fall
8 under -- it has never been tested whether Intelligent
9 Design is Creationism or not. We felt uncomfortable
10 being the test case and having to determine I guess
11 whether or not -- have someone determine for us whether
12 or not it fell -- if it was lawful or unlawful and that
13 kind of thing.

14 We were worried about the whole separation of
15 church and state, is it Creationism, that type of thing
16 also along with it not being science.

17 Q. In these discussions with the administration, are you
18 bringing that to their attention?

19 A. Yes.

20 Q. And are you concerned for your personal liability, or is
21 it just for the District?

22 A. I think there is a degree of personal liability there.
23 I have said this a lot. We felt that we were stuck in
24 the middle.

25 We had a group that was sort of dictating to us

1 what we had to do, but we were the ones that had to do
2 it in the classroom. We did feel liable. I think we
3 said that in several meetings.

4 We were worried that someone could sue us for
5 saying certain things in the classroom.

6 Q. Did the administration ever respond to those concerns?

7 A. Not until probably November. Not at this time.

8 Q. All right. What is next, the October 18th Board
9 meeting?

10 A. Yes.

11 Q. Did you go?

12 A. Yes.

13 Q. Did you go because of the biology curriculum issue?

14 A. Absolutely.

15 Q. When you went, did you have the document we have been
16 referring to as draft with you?

17 A. I believe so, yes.

18 Q. Did you have other versions?

19 A. I don't think I took any with me. I think they were
20 given to us possibly even at the meeting. I was sitting
21 beside Mrs. Spahr. So probably given to her perhaps the
22 version A, B and C.

23 Q. Do you think it would help if you had those in front of
24 you?

25 A. Are they here?

1 Q. I don't think so. Let me see.

2 A. There's two of them here. It says C.

3 (J. Miller Deposition Exhibit 7 was marked.

4 BY MR. GILLEN:

5 Q. Jen, I am giving you documents we have marked as Miller
6 7.

7 A. Yes.

8 Q. Would you take a look through that, please, noting that
9 some are two-sided copies and some are not?

10 A. (Witness complies. Okay.

11 Q. Do those look familiar to you?

12 A. Yes.

13 Q. With that in mind, do you have notes that relate to the
14 October 18th Board meeting?

15 A. October 18th?

16 Q. Yes.

17 A. I believe I do. Maybe, I don't. I don't believe that I
18 do.

19 Q. I think you are right. All right.

20 A. I think Mrs. Spahr had notes from that meeting, but I
21 don't believe that I have any.

22 Q. Tell me what you remember, Jen, about that October 13th
23 Board meeting.

24 A. It is the 18th.

25 Q. 18th, I am sorry.

1 A. There was public comment at the beginning. I know that
2 Mrs. Spahr stood up and prepared a statement that she
3 read to the Board.

4 I believe that at that time would have been one of
5 our Co-Presidents of our Association made a statement to
6 the Board.

7 Q. Let's start with Mrs. Spahr. Do you remember the thrust
8 of her comments to the Board?

9 A. She -- basically that we wanted no parts of Intelligent
10 Design. I remember her quoting court cases that had to
11 do with Intelligent Design/Creationism type thing. I
12 guess Creationism more so.

13 And I remember she definitely quoted court cases
14 because I remember Mr. Buckingham making the comment
15 where did you get your law degree after she was doing
16 that. That is why I remember her quoting those.

17 Q. All right. Any other Board members react to Bert
18 Spahr's comments?

19 A. That is the one I remember. I don't remember others,
20 no.

21 Q. You indicated that someone else spoke, a Union rep?

22 A. I believe Jere Wynegar spoke. That was the meeting that
23 he spoke at. He at that time was Co-President of the
24 Association.

25 Q. Co-President with who?

1 A. Sandi Bowser. He is no longer Co-President, but he was
2 at that time.

3 Q. Do you recall the thrust of his comments?

4 A. Same type of comments about not including Intelligent
5 Design. I think there was something about -- I can't
6 remember. Something about being -- I don't know if it
7 was being represented, or they are being backed by --
8 these were comments that were from Dover and the Union
9 as a whole, maybe PSEA and that type of thing. That we
10 were backed by those types of organizations. But
11 nothing in more detail than that.

12 Q. When Mrs. Spahr and Mr. Wynegar spoke, do you recall any
13 of them bringing up whether or not the teachers were
14 going to be required to teach it?

15 A. I don't recall. I believe Mrs. Spahr handed you a copy
16 of her -- of the speech she gave. I am sure you can
17 look, but I don't recall it in particular now.

18 Q. How about Creationism, was Bert Spahr equating
19 Intelligent Design with Creationism?

20 A. I believe yes because she was quoting again cases, and
21 there has been no cases on Intelligent Design. I am
22 only assuming she was using the Court cases on
23 Creationism.

24 Q. Let's just run through the Board. I know you remember
25 Mr. Buckingham responding to her. How about Alan

1 now that this is passed or something -- I don't know if
2 it was before or after it was passed.

3 Something was said about a lawsuit and that we
4 could be sued. And she said -- it was our understanding
5 she was referring to the teachers -- if they sue us,
6 then they should be fired because they agreed with this.

7 And that caused me to jump up out of my seat and
8 go to the podium and tell them that we did not agree
9 with this, the change to the curriculum.

10 Q. Okay. When you say this, what are you getting at at
11 that point in time?

12 A. The curriculum change, the adding of the words
13 Intelligent Design to the curriculum.

14 Q. I just want to make sure I don't neglect this. Jen, in
15 Miller 3, there's some notes that have October 18th in
16 the left-hand -- upper left-hand corner.

17 Is that your handwriting or Bert Spahr's.

18 A. That is Bertha's.

19 Q. Later on in the same pack, there's some notes like this,
20 Jen?

21 A. Yes. That was I believe my notes at the November 1st
22 meeting because that was right after November 1st.

23 Q. Thank you very much. I just wanted to make sure. Back
24 to the October 18th meeting. If you would, look at
25 Miller 7.

1 A. (Witness complies.) Yes.

2 Q. Just look at and compare the enclosures marked XI-A,
3 XI-B and XI-C.

4 A. Yes.

5 Q. If you look at the portion of Exhibit 7 that has the
6 Bates stamp number 17 in the lower right-hand corner --

7 A. Yes.

8 Q. -- you will see that the cover letter describes the
9 following document as the recommended changes to the
10 biology curriculum from the Board curriculum committee.

11 A. Yes.

12 Q. Would you take a look at that?

13 A. Yes.

14 Q. Now if we look under the column Units
15 Content/Concepts/Process, at the foot of that page you
16 will see what I believe are text identical to that in
17 the draft we discussed earlier?

18 A. Yes.

19 Q. Now if we go to the next page, which is Bates stamped --
20 if you go to the page Bates stamped 19 referencing
21 enclosure XI-B, you will see the cover letter describes
22 it as the recommended changes to the biology curriculum
23 for the administration and staff?

24 A. Yes.

25 Q. And then the following document which is Bates stamped

1 page 20 or has Bates stamp number 20, what is that, Jen?

2 A. That is what we had agreed to as a change to our
3 curriculum. We would be willing to point out that there
4 are gaps in some parts of Darwin's Theory and of other
5 Theories of Evolution, period.

6 Q. I note that the reference under the column headed
7 Materials and Resources, the reference to *Of Pandas* is
8 out?

9 A. Yes.

10 Q. If we turn to the next page of Exhibit 7 which has the
11 Bates stamp number 21 in the lower right-hand corner and
12 references XI-C, you see there is attached is a second
13 draft to the recommended changes to the biology
14 curriculum of the administration and staff.

15 A. Well, this is the first time I have seen this. This
16 upsets me because that was not the recommendation from
17 the staff because it has the words Intelligent Design
18 it. Oh, no, it does not. Okay. Never mind.

19 Q. That's right, Jen. That is what I was going to ask you
20 about. I think you have answered my question, but is
21 this the first time you have seen it, or looking at it
22 now --

23 A. This is the first time I have seen the memorandums that
24 were attached. We had gotten these at the Board
25 meeting, but I don't believe we had the memorandums that

1 were attached.

2 Q. By these, you mean the referenced enclosures; in other
3 words, the cover memos?

4 A. The cover memos, yes.

5 Q. They reference the enclosure. You hadn't seen the cover
6 memos?

7 A. Yes.

8 Q. But you had seen the enclosures?

9 A. Yes.

10 Q. With that in mind, I would like you to look at this
11 enclosure which is XI-C and tell me what you notice is
12 different.

13 A. There is a note at the bottom that says origins of life
14 is not taught. And the reference to *Of Pandas and*
15 *People* is still -- is there.

16 Q. And if I am not mistaken, the entry under UNIT
17 Content/Concepts has been changed slightly to read
18 students will be made aware of gaps and problems in
19 Darwin's Theory and of other Theories of Evolution.

20 So on the one hand, problems has been taken from
21 the Board curriculum committee's version; is that
22 correct, Jen?

23 A. It looks like it, yes.

24 Q. On the other hand, the reference to Intelligent Design
25 has been omitted?

1 A. Yes.

2 Q. Now with that in mind, when you went to the
3 October 18th, 2004 Board meeting, does XI-C, this last
4 document we are looking at, seem to reflect what you
5 thought the administration and staff was going into the
6 meeting with?

7 A. My recollection is that -- and I believe that Dr. Nilsen
8 even came over to us at one point during the meeting and
9 said which version do you want, and we said we want B.

10 Q. That's why I am asking you because the cover letter
11 describes it as a set of recommended changes from
12 administration and staff.

13 A. Right. Like I said, that is the first time I had seen
14 that. I was not aware that that included staff on
15 there.

16 Q. Well, do you have any recollection of discussions with
17 Mr. Baksa between October 8th and October 18th
18 addressing these points of conflict that are being
19 reflected in the changes to the various enclosures?

20 A. The only thing that I can remember, like I said, is when
21 Dr. Nilsen came to me and said Mr. Bonsell wanted to add
22 the origins of life is not taught at the bottom. Dr.
23 Nilsen was saying he thought that was a good idea, that
24 that would sort of alleviate some of our fears.

25 I think I said to him at that point I am not sure

1 if it does; that he could put that in there because we
2 had explained to them several times we didn't teach
3 origins of life. It didn't matter if it was there or
4 not.

5 And again, my recollection is that Dr. Nilsen had
6 said that if we are handing out these books -- if
7 students are taking them home, then the reference had to
8 be there.

9 I don't know. I can't remember any other specific
10 conversations other than that.

11 Q. How about if we focus on the note and look at your
12 discussions throughout. I mean if I am understanding
13 you correctly, you have said it was always your point
14 that origins is not taught?

15 A. Right.

16 Q. If I am not mistaken, Bert Spahr had the same position?

17 A. Yes, yes.

18 Q. Do you have a definite recollection of that not being
19 discussed as a possible addition on the part of
20 teachers?

21 A. I think at that point, we probably said, you know, if it
22 has to be there, fine. Again, we don't teach origins of
23 life, anyway. If it is on there, it is not a big deal
24 because it is what we already do.

25 Q. Remember anything else? You said Heather Geesey made a

1 comment.

2 How about Sheila Harkins, did she ask you a
3 question?

4 A. Yes. I think that I recall her asking me at the Board
5 meeting something about -- because if I remember
6 correctly, the part that was eventually voted upon or
7 that they were looking at was part A with the addition
8 of the note origins of life will not be taught. That
9 was added from Part C to Part A. That was the final
10 thing that was approved.

11 I think I remember her asking me something about
12 that origins of life, will that inhibit you from talking
13 about anything in the classroom? I believe that was her
14 question to me at that Board meeting.

15 Q. What was your response?

16 A. I think -- if I remember correctly, I think that I said
17 that even though we don't teach it, with it being there,
18 it made me a little more uncomfortable with questions
19 that may come up in the classroom.

20 Are we allowed to discuss that? If there is a
21 question, can we discuss that type of thing if that is
22 in the curriculum? So she was asking about that, does
23 it inhibit sort of discussion in the classroom.

24 Q. Do you recall any other Board members addressing the
25 note or its purpose?

1 A. Not that I can recall, no.

2 Q. Do you recall any of the Board members addressing or
3 explaining the term origins of life as it is used in the
4 note?

5 A. I don't -- no, no, I don't remember that.

6 Q. All right. As we sit here and think about this meeting,
7 Jen, and we are focused on the biology curriculum change
8 at this point, anything else stick out about the
9 meeting? For one thing, it seems like it was
10 contentious?

11 A. Yes. There were several times when Noel Wenrich had
12 tried to change -- several times he had tried to change
13 wording or language. I don't remember. It was so
14 confusing.

15 They voted. I don't know how many times where
16 they would vote like is it okay to change it, and then
17 they would go through another round and say are we going
18 to accept that change. There were so many rounds of
19 voting that I sort of lost track of what they were
20 voting on sometimes.

21 I remember they took a break at one point. I
22 think it did get contentious there between
23 Mr. Buckingham and Mr. Wenrich at some points because he
24 was trying to do this.

25 Q. And by this, you mean the Parliamentary maneuvers of

1 Mr. Wenrich?

2 A. Yes. He was trying to get -- he was trying to get the
3 language sort of -- he was trying to take Intelligent
4 Design is what he had done several times to this.

5 Q. And that is Mr. Wenrich?

6 A. Yes. He was trying to do that. I remember at a break
7 at some point, we were confused. I was sitting at a
8 table with Mrs. Spahr and Dr. Nilsen came over and said
9 which version do you want? And we said we want B. And
10 he said whatever happens, don't clap. And we had no
11 idea what that meant because we didn't get what we
12 wanted so we had no reason to clap. So I don't know
13 what that meant at that point.

14 Q. Let's focus on the Board members. Do you remember Jane
15 Cleaver saying anything?

16 A. No. At some point, she wasn't around a whole lot. I
17 don't even remember if she was at the meeting or not. I
18 am sure they keep track of who is in attendance, but I
19 don't remember.

20 Q. Sure. And Mr. Wenrich, do you recall anything that he
21 said during this portion of the Board meeting?

22 A. Like I said, he was trying to get the wording changed.
23 I don't remember anything in particular, no, that I
24 could --

25 Q. How about Sheila Harkins, apart from the question that

1 she asked you, do you recall anything else she said?

2 A. No.

3 Q. Angie Yingling?

4 A. The only thing I remember about Angie Yingling was that
5 she was sort of our swing vote when they were actually
6 voting on this A. She had passed on her vote, and it
7 was a four-four tie, and they went to her. And she
8 hesitated and hesitated and then finally voted it in.

9 I don't remember anything particular that she said
10 other than that action.

11 Q. Okay. Focusing again on the existence of this XI-C, do
12 you recall Bert Spahr making any comment about that
13 enclosure?

14 A. No. I don't know if it was part of what she spoke at
15 the beginning of the meeting or not. Because I
16 believe -- I don't think she did because at that meeting
17 I believe that we had gotten these three different
18 versions at that meeting. I don't think she would have
19 had time to prepare anything about any of these.

20 Q. I guess that is what I am asking, Jen. From the way you
21 seem to be recalling it now, you would be only expecting
22 two versions. But you show up, and you get three.

23 And the third, XI-C, is entitled Recommendation
24 from the Administration and Staff. Some parts, you can
25 see how they got there, but you don't have a distinct

1 recollection of formulating a separate version it seems?

2 A. Right. I don't remember that.

3 Q. Let me ask you that. Although you don't have a
4 recollection of formulating a third version, it seems
5 your discussions with Mike Baksa were about the
6 additions that are reflected in XI-C?

7 A. Right. And like I said, there were so many versions
8 going back and forth, is this okay, that kind of thing,
9 so like I said, the two at the beginning I definitely
10 remember. The third one is sort of you know -- I
11 remember having like you said discussions about them,
12 but I don't remember if he sat down and officially said
13 this is okay, or if we have to, this is okay. I don't
14 remember in particular.

15 Q. Let me ask you this: Do you remember sort of your views
16 being solicited on those issues, the note and use of *Of*
17 *Pandas* as a reference?

18 A. Like I said, I know Nilsen came to talk to me about
19 those, and we discussed those two things, yes.

20 Q. How about reaction by any of your other colleagues to
21 the various versions that were being voted upon at the
22 October 18th, 2004 meeting; Bob Eshbach, did he say
23 anything?

24 A. At the meeting?

25 Q. Yes, at the meeting.

1 A. I don't believe so. He was the one though when Heather
2 Geesey made her statement, we both jumped up and went to
3 the podium. I ended up speaking. I don't remember him
4 speaking.

5 Q. Bob Linker?

6 A. No.

7 Q. Anything else stick out about the meeting? Was the term
8 Creationism used at that meeting?

9 A. I don't remember in particular unless it was during like
10 I said Bertha's speech.

11 Q. All right. When the voting was over, the smoke cleared.
12 What did you have a sense was the result?

13 A. We were disgusted, I guess you want to say, because up
14 to this point, we felt that we were being cooperative
15 and trying to compromise with these additions, and it
16 seemed like they didn't listen to our input. They went
17 ahead with what they wanted anyway.

18 So we felt sort of let down at that point, that
19 all of this work was for nothing because they voted in
20 what they wanted anyway.

21 Q. And at this point, Jen, when you say you were
22 cooperative, you are referencing what issue
23 specifically, the inclusion of Intelligent Design?

24 A. No. That we were willing to point out the gaps. That
25 we were willing to have *Of Pandas and People* only as a

1 reference text in our classrooms. That those kind of
2 issues that we thought had been satisfied, had been
3 solved, and then we made clear that we wanted no parts
4 of Intelligent Design, and they put it in the curriculum
5 anyway.

6 Q. So in the aftermath of this meeting, did you have any
7 discussion with any of the Board members?

8 A. I know that Casey Brown -- this the meeting that she and
9 her husband both resigned. I remember her crying at the
10 end and giving me a hug.

11 But other than that, I remember her saying --
12 telling me that she tried or we tried. And other than
13 that, no.

14 Q. And how about with your colleagues? As you left the
15 meeting, did you have any discussion?

16 A. I'm sure -- I think we were just sort of shell shocked
17 at that point. Not only did this happen, then there
18 were these resignations. There was a lot going on at
19 that meeting. I can't remember any particular
20 discussions other than just sort of shock.

21 Q. Go back to the meeting for a minute. Do you recall Dr.
22 Nilsen speaking?

23 A. I remember I believe it was before this meeting, there
24 was a conversation with -- I think it was Mr. Baksa that
25 -- and maybe Dr. Nilsen was there, too. We felt that